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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~348~~. 71

THE STEAMBOAT MOLLIE MOHLER, HER BOATS, ETC., THE NORTHWESTERN UNION PACKET COMPANY, CLAIMANT, AND PEYTON S. DAVIDSON AND JOSEPH A. SHEPHERD, STIPULATORS, APPELLANTS,

vs.

THE HOME INSURANCE COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED DECEMBER 7, 1872.

Oct. 2, 1874

SUPREME COURT OF THE UNITED STATES.

No. 348.

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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a special term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held at the city of Milwaukee, in said district, on the second Monday (being the eighth day) of April, A. D. 1872. Present and presiding, the honorable Thomas Drummond, circuit judge, Charles S. Hamilton, marshal, and Edward Kurtz, clerk. Among other the following proceedings were had, to wit:

THE HOME INSURANCE COMPANY OF N. Y.
vs.
THE STEAMBOAT MOLLIE MOHLER, HER BOATS, &c., The Northwestern Union Packet Company, claimant, and Peyton S. Davidson & Joseph A. Shepherd, stipulators. } Appeal in admiralty.

Be it remembered that heretofore, to wit, on the 29th day of September, A. D. 1871, a certified copy of record of said cause on appeal from the district court of the United States for the eastern district of Wisconsin, was received from the clerk of said court, and filed in the clerk's office of this court, as follows, to wit:

2 District court of the United States of America for the eastern district of Wisconsin.

At a special term of the district court of the United States of America for the eastern district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the first Monday (being the seventh day) of August, A. D. 1871. Present, the honorable Andrew G. Miller, judge of said court, presiding, Charles S. Hamilton, marshal, John M. Miller, clerk.

THE HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER, HER BOATS, &c. } In admiralty.

Be it remembered that heretofore, to wit, on the 22d day of November, A. D. 1867, came the libellant, by its proctors, Messrs. Emmons & Van Dyke, and presented to the court its libel against the steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture, as follows:

Libel in admiralty.

To the judge of the district court of the United States for the district of Wisconsin:

The Home Insurance Company of New York exhibits this its libel against the steamboat called the Mollie Mohler, whereof Henry W. Holmes now is or lately was master, her boilers, engines, machinery,

boats, tackle, apparel, and furniture, in a cause of contract civil and maritime. And thereupon the libellant doth allege and articulately propound as follows, to wit:

First. That the libellant is a body corporate and politic created by and organized under the laws of the State of New York, and engaged in and empowered, among other things, to do and transact a general lake and inland insurance business, and make assurance upon vessels and their cargoes upon the rivers and lakes.

3 Second. That the said steamboat, now lying in the district aforesaid, is of more than thirty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose was enrolled and licensed for the coasting trade and employed in the business of commerce and navigation between ports and places in different States of the United States upon the Mississippi River and its navigable tributaries navigable from the sea, and then had appurtenant as part of her carrying capacity one or more barges, which said steamer and barges, as this libellant is informed and believes, then were and still are the property of the Northwestern Union Packet Company, a body corporate of the State of Iowa.

Third. That on or about the 12th day of May, A. D. 1866, the said steamboat with a barge or barges appurtenant, whereof Henry W. Holmes was then master, and Orrin S. Hutchinson was then clerk, being then at Mankato, in the State of Minnesota, and designed upon a voyage from Mankato aforesaid, upon the Minnesota and Mississippi Rivers, within the admiralty and maritime jurisdiction of this honorable court, Joseph Reynolds being the owner of seven hundred bags of wheat, of the value of twenty-one hundred dollars, shipped on board the said steamboat, upon a barge appurtenant, the said wheat, in good order and condition, to be carried and transported from Mankato aforesaid to St. Paul, upon the Mississippi River aforesaid, and there to be delivered in like good order and condition, dangers of fire and navigation only excepted, unto J. S. Hill, for account of the said Joseph Reynolds for certain freight in that behalf to be paid, and he, the said Joseph Reynolds, received from the said master therefor a bill of lading, receipt, and contract, a copy of which is hereto annexed and made a part hereof.

Fourth. That the libellant did make assurance upon the said wheat and sacks so ladened upon said steamer and barge, and did underwrite a policy thereon for the sum of twenty-one hundred dollars.

Fifth. That the said steamboat, with said barge in tow, departed from Mankato aforesaid, with said wheat and sacks on board, on or about the said twelfth day of May, A. D. 1866, but the said master as aforesaid, though not prevented by dangers of fire or navigation, did not safely convey and transport the said wheat and sacks to St. Paul aforesaid, and there deliver the same in like good order and condition, but upon the contrary thereof, and by reason of the unseaworthiness of said steamboat and barge, and the carelessness, unskilfulness, and mis-

4 management of the said master, and the carelessness, negligence, and recklessness of the said master, and of his mariners and servants under him, the said barge on or about the fourteenth day of May, A. D. 1866, was sunk in the Minnesota River, while on the voyage aforesaid, and the said wheat and bags on board became wetted and wholly lost to the said Joseph Reynolds, by reason whereof he sustained damage to the amount of twenty-one hundred dollars.

Sixth. That by reason of the loss and damage aforesaid, the libellant was compelled to pay, and did, on or about the 28th day of May, A. D.

1866, pay to the said Joseph Reynolds so assured as aforesaid, the sum of two thousand and seventy-five dollars and fifty cents.

Seventh. That by reason of the premises the libellant is subrogated to all of the rights and interests, and rights of the said owner and shipper in said wheat in the bill of lading mentioned, and wetted, damaged, and lost as aforesaid, and so insured by the libellant as aforesaid.

Eighth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steamboat Mollie Mohler, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and said barge, and that this honorable court will pronounce for its aforesaid demand, and decree the same to be paid with interest from the 28th day of May, A. D. 1866, besides costs, and for such other relief in the premises as to right and justice may appertain.

EMMONS & VAN DYKE,
Proctors for Libellants.
HOME INSURANCE CO.,
By EMMONS & VAN DYKE,
Its Proctors.

DISTRICT OF WISCONSIN, *ss:*

J. Albert Helfenstein, of Milwaukee, in said district, being duly sworn, says that he is one of the agents of the libellant in the foregoing libel named; that he is more familiar with the facts therein than the libellant or its officers, and verily believes the said libel to be true.

J. A. HELFENSTEIN.

Subscribed and sworn to before me this 22d day of November, A. D. 1867.

J. M. MILLER,
U. S. Commissioner, Wis.

MANKATO, MAY 12, 1866.
No. ———

5 Shipped in good order and condition by J. Reynolds, on board the steamer M. Mohler and barge, whereof Holmes is master, bound for , the following articles marked and numbered as per margin, which we agree to deliver without delay in like good order (dangers of fire and navigation only excepted) at unto the Milwaukee Company, consigned to J. S. Hill, St. Paul, they paying freight at the rate of 30 cents per sack, and charges $——

In testimony whereof the master or clerk of said boat hath affirmed to five bills of lading, all of this tenor and date, one of which being accomplished the others to be of no effect, privilege to reship and tow.

Marks.	Articles.	Weight.
Shipped on account of Joseph Reynolds to the care of J. S. Hill, St. Paul.	700 bags of wheat.	

[2 ct stamp, cancl'd.]

HUTCHINSON.

And same day (November 23d, 1867) came said libellant and filed its stipulation for the payment of costs, with J. A. Helfenstein as surety, in the sum of two hundred and fifty dollars, conditioned "that the said

libellant shall abide by the final decree entered in this cause, and shall pay all such costs as shall be awarded against it by this court, or, in case of appeal, by the appellate court.

Which stipulation is as follows:

District court of the United States for the district of Wisconsin.

Whereas a libel was filed in this court on the 22d day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Home Insurance Company of New York against the steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue against steamboat, and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or its surety, execution may issue against their goods, chattels and lands for the sum of two hundred and fifty dollars:

6 Now therefore it is hereby stipulated and agreed for the benefit of whom it may concern that the stipulator undersigned shall be and he is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against it by this court, or, in case of appeal, by the appellate court.

Home Insurance Co. of New York City,

By J. A. HELFENSTEIN.

J. A. HELFENSTEIN.

Taken and acknowledged this 22d day of November, 1867, before me.

J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

J. Albert Helfenstein, party to the above stipulation, being duly sworn, deposes and says he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. A. HELFENSTEIN.

Sworn to this 22d day of November, 1867, before me.

J. M. MILLER,
U. S. Commissioner.

Whereupon it is ordered by the court that process issue to the marshal, returnable on the fifteenth day of December next, at eleven o'clock in the forenoon, that this court will on that day proceed to the trial and hearing thereof; and it is further ordered that notice be given by advertisement in the Milwaukee Daily News, a paper published in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial, for at least six days.

Whereupon a monition issued as follows:

DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin, on the twenty-second day of No-

vember, in the year of our Lord one thousand eight hundred and sixty-seven, by the Home Insurance Company of New York against the steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture, for the reason and cause in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or ves-
7 sel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the fifteenth day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our Independence the ninety-second.

J. M. MILLER, *Clerk.*

EMMONS & VAN DYKE,
Proctors for Libellant.

In obedience to the within precept, I have, this 25th day of November, 1867, attached the steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture, at La Crosse, and have given due notice by advertisement for six days in the Milwaukee News, and by posting notices to all persons claiming the same, that this court will on the fifteenth day of December next, at eleven o'clock a. m. of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, move to the trial and condemnation thereof unless a claim shall be interposed for the same, and that they make their allegations in that behalf.

Service, $2.00; travel, 12.00; proclamation, 30; custody, 10.00; expense, 2.50; printing, 2.80;—$29.60.

CASSIUS FAIRCHILD, *Marshal,*
By HOWARD CRAMER, *Deputy.*

8 November 28, 1867.—This day came the Northwestern Union Packet Company, by P. S. Davidson, its superintendent, as claimant of said steamboat Mollie Mohler, her boilers, &c., and presented its stipulation in the sum of forty-five hundred dollars, with Peyton S. Davidson and Joseph A. Shepherd as sureties, conditioned that they shall abide and answer the decree of this court in this cause, which stipulation is as follows:

District court of the United States for the district of Wisconsin. In admiralty.

Whereas a libel was filed on the 22d day of November, in the year of our Lord one thousand eight hundred and sixty-seven, by the Home Insurance Company of New York, against the steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned. And whereas the said steamboat Mollie Mohler is in the custody of the marshal under the process issued in pursuance of the prayer of said libel:

Appearing personally the Northwestern Union Packet Company as the claimant of the said steamboat, and furnished for sureties Peyton S. Davidson and Joseph A. Shepherd, and the said sureties so produced, Peyton S. Davidson and Joseph A. Shepherd, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of forty-five hundred dollars that the said Peyton S. Davidson and Joseph A. Shepherd shall abide and answer the decree of the said court in the aforesaid cause; and unless they shall do so, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattles, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

THE NORTHWESTERN UNION PACKET CO.,
By P. S. DAVIDSON, *Superintendent.*

P. S. DAVIDSON.
JOSEPH A. SHEPHERD.

Taken and acknowledged this twenty-sixth day of November, 1867, before me.

HARVEY E. HUBBARD,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

Peyton S. Davidson and Joseph A. Shepherd, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

P. S. DAVIDSON.
JOSEPH A. SHEPHERD.

Sworn to this 26th day of November, 1867, before me.

H. E. HUBBARD,
U. S. Commissioner.

Whereupon it is ordered by the court that a warrant of restitution be issued to restore said steamboat Mollie Mohler, her engines, machinery, boats, tackle, apparel, and furniture to said claimant.

Warrant of restitution issued as follows:

DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the 22d day of November, in

the year of our Lord one thousand eight hundred and sixty-seven, by the Home Insurance Company, against the steamboat Mollie Mohler, her engines, boilers, machinery, boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to said libellant; and whereas the said steamboat Mollie Mohler, &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also a claim has been interposed and filed in the said court by the Northwestern Union Packet Company, and such proceedings have been thereupon had that, by the sentence and decree of said court in this cause, made and pronounced on the 28th day of November, eighteen hundred and sixty-seven, the said steamboat Mollie Mohler, &c., was adjudged to belong as claimed, and was ordered to be restored to said claimant: Therefore you, the said marshal, are hereby commanded to release the said steamboat Mollie Mohler, her engines, &c., from arrest, and to deliver and return the same unto the said Northwestern Union Packet Company.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 28th day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of these United States the ninety-second.

J. M. MILLER, *Clerk.*

In obedience to the within precept, I have, this 28th day of November, A. D. 1867, released the steamboat Mollie Mohler, her engines, boiler, machinery, boats, tackle, apparel, and furniture, from arrest, as commanded.

CASSIUS FAIRCHILD,
U. S. Marshal.

Service, $2.00.

MAY 4TH, 1871.—This day came the respondents by their proctors, Messrs. J. W. & A. L. Cary, and filed their answer, as follows:

Answer.—In admiralty.

To the judge of the district court of the United States for the district of Wisconsin.

The answer of Northwestern Union Packet Company, owner and claimant of the steamboat Mollie Mohler, respondent, to the libel of the Home Insurance Company against said steamboat:

And now comes the Northwestern Union Packet Company, owner of the steamboat Mollie Mohler, and for answer to the libel of the Home Insurance Company against said steamboat, doth allege and propound as follows, to wit:

First. That the said Northwestern Union Packet Company is a corporation created and organized under and by virtue of the laws of the State of Iowa, and is the true and bona-fide owner of the steamboat Mollie Mohler, and that no other person or corporation is the owner thereof.

Second. That the first article of said libel is true.

Third. That the second article of said libel is substantially true, except the allegations that said steamboat, at the time the said pretended cause of action set forth in said libel arose, had appurtenant as part of her carrying capacity one or more barges, which said barges then were and still are the property of the Northwestern Union Packet Company; and these allegations are not true, except so far as they may agree and correspond with the facts hereinafter set forth.

Fourth. In answer to the third article of said libel said respondent admits that on or about the 12th day of May, A. D. 1866, the said steamboat, whereof Henry W. Holmes was then master, and Orin S.
11 Hutchinson was then clerk, was at Mankato, in the State of Minnesota, and designed upon a voyage from Mankato aforesaid, upon the Minnesota and the Mississippi Rivers, within the admiralty and maritime jurisdiction of this honorable court; but said respondent denies that said steamboat then had any barge or barges appurtenant thereto. And said respondent further says that all of the allegations contained in the said third article of said libel not above admitted or denied are not true as therein alleged and propounded, and said respondent denies said allegations, except so far as they may agree and correspond with the facts hereinafter set forth. And said respondent, for a further answer to the third article of said libel, alleges that on or about the 12th day of May, A. D. 1866, the said Joseph Reynolds, as respondent is informed and believes, was the owner of a barge called the Errickson, which was then at Mankato aforesaid, ladened with seven hundred bags of wheat, which said wheat, as respondent is informed and believes, belonged to and was owned by the said Joseph Reynolds, but as to whether said wheat was of the value of twenty-one hundred dollars, or in good order and condition, this respondent has no knowledge or information sufficient to form a belief; that respondent's said steamboat Mollie Mohler, being then at Mankato as aforesaid, and being designed on a voyage upon the Minnesota and Mississippi Rivers, from thence to St. Paul, in the State of Minnessota as aforesaid, the said Joseph Reynolds entered into a contract with the master of said steamboat, whereby said master for a consideration was to take the said barge Errickson, ladened with said wheat as aforesaid, in tow on her said voyage, and tow said barge from Mankato to St. Paul aforesaid, and that thereupon the said master or the clerk of said steamboat gave to the said Joseph Reynolds a bill of lading, a copy of which is annexed to said libel, but that said bill of lading was only designed and intended to represent said contract for towage, and nothing more; that said steamboat did take said barge in tow upon her said voyage, and at the time of the happening of the accident hereinafter mentioned had her in tow upon the contract of towage hereinbefore mentioned.

Fifth. That respondent has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth article of said libel, and therefore neither admits or denies the same, but leaves said libellant to make such proof in reference thereto as it may be advised.

Sixth. In answer to the fifth article of said libel said respondent admits that said steamboat, having said barge Errickson with
12 said wheat and sacks on board, in tow, departed from Mankato aforesaid on or about the 12th day of May, A. D. 1866; also that the said master did not safely convey and transport the said wheat and sacks to St. Paul aforesaid, and there deliver the same in like good order and condition, but denies that said master was not prevented

from so doing by the dangers of navigation; said respondent also admits that said barge, on or about the 14th day of May, A. D. 1866, was sunk, not in the Minnesota River, but in the Mississippi River, while on the voyage aforesaid, and that the said wheat and bags on board of the same became wetted and wholly lost to the said Joseph Reynolds, but as to whether the said Reynolds by the sinking of said barge and the loss of said wheat sustained damage to the amount of twenty-one hundred dollars, this respondent has no knowledge or information sufficient to form a belief, and therefore neither admits or denies the same. But said respondent denies that the sinking of said barge and the loss of said wheat were by reason of the unseaworthiness of said steamboat or barge, or the carelessness, unskilfulness, or mismanagement of the said master, or the carelessness, negligence, or recklessness of the said master, or of his mariners or servants under him.

And said respondent, further answering, alleges that on or about the 12th day of May, A. D. 1866, this respondent's said steamboat Mollie Mohler left the port of Mankato as aforesaid, designed on a voyage to St. Paul as aforesaid, having in tow the said barge Errickson, which said barge belonged to one Joseph Reynolds, and was laden with wheat belonging to the said Reynolds as aforesaid; that said steamboat and barge proceeded on their said voyage without accident until they reached the port of St. Peter, in said State of Minnesota, where they took in tow another barge called the Eclipse, laden with wheat, and thence proceeded to the port of Belle Plains, in said State, where they took in tow another small barge called the Bauty, also laden with wheat; that from thence they proceeded on their said voyage without accident, the said steamboat and barges being tight, staunch, and strong, and well and sufficiently manned and equipped, and in every respect fit to perform their intended voyage, until on the 14th day of May, A. D. 1866, at about 8 o'clock p. m., they reached a point upon the Mississippi River about two miles above said St. Paul, at which said point there were then and now are standing in said river several stone piers, erected for the purpose of a railroad-bridge across said river; that just before they reached said piers, and while proceeding with due caution and care, the said steamboat and barges then being in
13 the widest and best channel of the river, and the said master and his mariners and servants being respectively in their proper places, a strong gust or gale of wind, coming from a southerly direction, suddenly arose and struck said steamboat and barges with great force and violence, so much so as to change the course of the said steamboat and barges, notwithstanding the best efforts of the said master, and his mariners and servants, to keep them in their course, which said wind, together with the current of the river, which there sets toward the middle of said piers, drove said steamboat and barges towards said middle pier, and, in spite of the best efforts of said master and his mariners and servants, the said barge Eclipse struck said middle pier with great violence, which stove a hole in her side, by reason whereof she filled with water and sunk immediately; that the jar caused by the striking of said barge against said pier, and the consequent sudden stoppage of said steamboat and barges, and also the current of said river, which at that point is very swift, caused the said barge Errickson to careen and fill with water and sink immediately; that said steamboat was immediately cut loose from the said sunken barges and proceeded with the said small barge Bauty to the said port of St. Paul, where the barge Bauty was left, and the said steamboat having discharged her freight, at once put back to the place of the wreck

as soon as possible, and took off all freight on said sunken barges that was above water, and proceeded with the same to said port of St. Paul; that the said wheat of the said Reynolds was lost by the sinking of said barge Errickson as aforesaid; that the sinking of said barge as aforesaid was not caused by the unseaworthiness of said steamboat or barges, or by the carelessness, negligence, unskilfulness, or want of foresight of the said master, or his mariners or servants, but was due wholly to an unforeseen danger of navigation.

Seventh. That respondent has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the sixth article of said libel, and therefore neither admits or denies the same, but leaves said libellant to make such proof in reference thereto as it may be advised.

Eighth. That respondent has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the seventh article of said libel, and therefore neither admits or denies the same, but leaves said libellant to make such proof in reference thereto as it may be advised.

Ninth. That all and singular the premises are true.

14 Wherefore said respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

JOHN W. & A. L. CARY,
Respondent's Proctors.

The want of oath to within answer waived on the hearing.

N. J. EMMONS,
Proctor for Libellant.

Respondent's Testimony.

THE HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER.

District court U. S., district of Wisconsin. Before Francis Bloodgood, court commissioner.

The deposition of Henry W. Holmes, on behalf of the respondent, taken by and before said commissioner, at his office in the city of Milwaukee, March 5th, 1868. Present, John H. Van Dyke, esq., of counsel for the libellant, and John W. Cary, of counsel for the respondent.

HENRY W. HOLMES, being duly sworn on behalf of the respondent, deposes and says:

I reside in Carver, Minnesota; my occupation is steamboat captain; I have been in the employ of the Northwestern Union Packet Company, and will be again when navigation opens.

Q. What was your business in May, 1866?

A. Captain of the steamer Mollie Mohler; she was owned by the Northwestern Union Packet Company.

Q. Whereabouts was that boat on or about May 12th, 1866, and what doing?

A. On her way down the Minnesota and Mississippi Rivers, on her trip from Mankato to St. Paul.

Q. Had she barges in tow, and how many?

A. Three barges in tow: Eclipse, Errickson, and Bauty.

Q. Where were they taken in tow, and with what were they loaded?

A. The Errickson, at Mankato, loaded with sack wheat, the Eclipse, at St. Peter, with bulk wheat, the Bauty, at Bell Plain, with sack wheat.

Q. How were these barges attached to the steamer?

A. The Eclipse was on the larboard side, Errickson on the starboard, and the Bauty on the starboard at the stern of the Errickson, right following after her.

15 Q. What was the condition of this steamboat as to being tight, staunch and strong; being well manned and fit to perform the voyage?

A. She was perfectly staunch, well manned, and in every respect she was able to handle her barges.

(The question and answer objected to as being mere general statements and not testimony; giving no particulars as to the character of the boat nor how she was manned.)

Q. What is the size of the Mollie Mohler, how many engines had she, and what and who were her crew and officers, and what was her equipment?

A. She is about 125 feet long, 23 feet beam, 2 engines, 2 boilers, captain, pilot, clerk, mate, engineer, watchman, deck hands, & (common working men) "roustabouts," and cabin and cook-house crew; she had lines, anchor, capstan, oars, poles, and fenders.

Q. Do you know the power of her engine?

A. About 12-inch bore, and 3 feet stroke, as near as my memory serves me.

Q. Was the boat in all respects seaworthy?

(Objected to as incompetent and inadmissible.).

A. She was.

Q. In what condition was she?

A. She was not leaking any. Her tiller and steaming-apparatus, engine-bells, and speaking-trumpet were all in good working condition. She had a staunch hull, good cavels, good guard, and decks in good condition; "cavels" are what we make our lines fast to in towing.

Q. How was she as to capacity to handle a tow and barges?

A. She was a good boat for handling barges and for towing, and was used on that river for towing barges, but also carried freight and passengers on the Minnesota and Mississippi Rivers, between St. Paul and Mankato; she was used for towing on that river more than any other of the Co.'s Minnesota River boats.

Q. To whom did the barge belong, and who was the owner of it?

(Objected to as immaterial and inadmissible; the bill of lading issued by the Co. being the contract of shipment, and stating the terms of the contract, and that said wheat was shipped on the said steamboat and barge without designating any barge, and evidence to vary, contradict or alter said bill of lading, and the contract thereby created, is inadmissable; and further, that if the respondents used or appropriated the barge of any other person or persons, it was the barge of the

16 Co. for the voyage, and they cannot thereby relieve themselves from their responsibility as common carriers, the bill of lading being a clean bill of lading.)

A. Joseph Reynolds was the owner of the barge Errickson.

Q. Whose property was shipped on board of that barge?

A. Joseph Reynolds' wheat.

Q. What was the contract or arrangement by which this barge was loaded with the wheat of the owner, Joseph Reynolds, and towed by the steamer Mollie Mohler, on that trip, and who made said contract or arrangement?

(The same objection as last above at length stated.)

A. Charles Hoffstadt—that is as near as I can come to his name; it is pronounced in that way—acting as Joseph Reynolds' agent, made the arrangement with me, I acting as captain of the boat. I was to have the use of his barge on each down trip, to carry nothing but his wheat on said barge out of Mankato or St. Peter. I was also to take out whatever of his wheat I could carry with my other tonnage.

Q. How much wheat was there on the barge Errickson on this trip?

A. About (1,000) one thousand sacks.

Q. How much was there on the Eclipse?

A. About 2,500 bushels of bulk, and about 200 sacks.

Q. How much on the Bauty?

A. About 300 sacks.

Q. What cargo on the Mollie Mohler?

A. About 800 sacks.

Q. How was this load with respect to the capacity of the said steamer and barges?

A. She was not overloaded, nor were the barges; each or any of them could have carried more. They were all in good handling condition.

Q. On what day did you arrive at Mendota on your way down to St. Paul, and what time did you arrive there, and what did you do after arriving at Mendota?

A. It was about May 12th, 1866, about an hour before sundown; we landed at Mendota, laid there until after sundown for the wind to go down, then started on our course for St. Paul.

Q. What had been the state of the weather during the day on which you arrived at Mendota, and why did you lay up at Mendota?

A. The wind had been blowing during the afternoon; we landed at Mendota to put off some freight or put some on, and laid there for the wind to lull, so we could go through the bridge.

17 Q. Are you acquainted with that section of country and the usual course of the wind?

(Objected to; "the wind bloweth where it listeth, and you hear the sound thereof, but ye know not whence it cometh or whither it goeth," and that the testimony sought is mere speculation.)

A. I can't answer that question; the wind is every way.

Q. Did the wind abate, and when?

A. The wind went down with the sun.

Q. At what time did you leave Mendota, and where did you go. Describe your course particularly until the occurrence of the accident at the piers of the bridge.

A. Very shortly after sundown we left Mendota, went through the bridge on the Minnesota River, down the Mendota bar, crossed the bar, then down the right hand shore to a clump of timber above the ferry, crossed over to the ferry, landing on the opposite side, down that shore to just above the cave, pulled out in the river about a third of the way; between the cave and the pier we met the steamer Julia; she sounded her whistle for our larboard side; the wind was blowing then. We could not give it to her, and we whistled for her to take the other side, which she did. We then passed the Julia, went on down to the piers, a gust of wind striking us we struck the larboard pier. The barge

Eclipse struck the larboard pier, filled and sunk; the barge Errickson sunk from the force of striking the pier and the current.

Q. How was the wind from the time you left Mendota until you met the Julia?

A. We had no wind to bother us after we left Mendota until we met the steamer Julia.

Q. Describe particularly this wind that drove you against the pier, and where it struck you.

(Objected to as immaterial.)

A. The wind was blowing in heavy gusts, very nearly southeast, as near as I could say; I would not swear positively as to its exact direction. We first felt the wind, so as to interfere with our handling, just after we met the Julia, and after passing her it lulled. The next heavy gale struck us about 4 or 5 lengths above the piers.

Q. How violent was this wind, and was it so violent as to drive the boat and barges out of their course?

(Objected to, both as to form and substance.)

A. It was blowing a heavy gale when the last gale struck; it threw our boat from her course.

Q. Who was at the wheel at the time of the accident?

18 A. The pilot.

Q. Where were you at the time?

A. On the roof of the boat. I had command of the boat. I am a licensed pilot, for the Minnesota and Mississippi Rivers, between S't Paul and Mankato.

Q. To what was you giving your particular attention at that time?

A. To my boat, barges, and the piers that we were then coming to.

Q. State who was the pilot at the wheel at the time.

A. John Luckey.

Q. State how the boat and barges were handled as to skill and seamanship, under the circumstances.

(Objected to, for the reason, the court must decide that question from the evidence, and inadmissible.)

A. They were well and skillfully handled.

Q. Between which piers did you attempt to pass?

A. Between the first and second piers, on the larboard side of the blind pier, going down stream. The blind pier is a round pier built for turn-table.

Q. Which pier did your barge strike?

A. The larboard pier.

Q. How was the boat laid, with respect to passing between those piers, when this gust of wind struck it?

(Objected to as immaterial.)

A. She was laying quartering with current, and headed for the pier starboard of the one she struck.

Q. Was that the proper position to be in in order to pass safely between said piers?

(Objected to both as to form and substance, being both leading and inadmissible.)

A. Yes, sir; it was a proper position, the wind and current setting from that pier. We held as close to it as we could get our boat.

Q. Is there anything further in regard to passing through those piers? If there is state it at length.

A. No, only that we could not handle our boat, and struck them from the force of the wind.

Q. You may state more particularly how it was that the striking of the pier caused the barge Errickson to sink.

A. It was the force of the blow and the current; the damming up of the current listed her and she filled. She was an open-hold barge, without any deck. By "listed," I mean she leaned down first to the steamboat, that is on the larboard side of the barge, straightened up, leaned the other way, and filled.

19 Q. What was the total width of the steamer and barge as they were arranged in the tow?

A. Not over (65) sixty-five feet.

Q. What was the stage of the water at these piers, or in that vicinity, at the time of this accident?

A. It was higher than our common steamboat stage.

(Answer objected to as being indefinite.)

Q. Can you state any facts showing how much higher than the ordinary steamboat stage it was at that time?

A. At a common stage the blind pier is out of water. I measured the water next day; there was 4 feet scant on the blind pier.

Q. How was the water on the low ground below the cave?

A. The water was over the low ground.

Q. Was there any place in that vicinity where you could land with safety after the first gust of wind struck you?

(Objected to as immaterial and leading.)

A. After we found the wind was blowing hard enough to interfere with our handling, the wind blowing on shore, there was no place where we could land, the current being strong; a stern-wheeled boat would not back towards the shore, but would back into the wind, throwing us broadside with the channel.

Q. After this gust of wind struck you, just as you were passing the Julia, could you then or at any time after, and before the accident, have changed your course and gone to a place of safety instead of attempting to go through between the piers? And, if not, state why.

(Objected to for the same reasons last above stated, being both leading and inadmissible.)

A. After passing the Julia we could not have made a landing, the banks being bad, wind blowing on shore; our only chance was to go through the piers.

Q. What would have been the effect if you had attempted to land or change your course in any way except to go through the pier?

A. If we had attempted to back our boat it would have laid her crossway of the river and channel; that would have taken her broadside on to the pier—we would have been afraid of it taking her there.

Q. What was done with this barge Errickson after it sunk, and the wheat in it?

A. The barge was afterwards raised. I could not say what was done with the wheat.

Q. Where did Reynolds, the shipper, reside?

A. I don't know.

20 Q. How soon after the sinking was the barge raised?

A. That I could not say.

Q. When the barge sunk did the wheat go entirely under water?

A. It did.

Cross-examination:

Q. Who subsequently raised the barge Errickson?

A. I could not tell you right positively who raised her, but think it was Captain Houghton; he raised her for the Packet Co.

Q. What time that spring did the Mollie Mohler commence her business of commerce and navigation?

A. About the first part of the month of April.

Q. When did you commence using with her the barge Errickson?

A. We had been towing the barge at different times during the whole season.

Q. What freight did you carry on that barge, public or private freight?

A. We used the barge for carrying sack wheat.

Q. Did you use her for any other wheat than that furnished by the owner?

A. We did.

Q. What did you use the barge for while in tow of the Mollie Mohler?

A. We used her for carrying wheat.

Q. For whom?

A. For any one, as far as her capacity would allow.

Q. Did she carry anything besides wheat on her; I refer particularly to your back trips?

A. I could not say particularly whether we did or not.

Q. Did you use or employ her in any different manner from what you did the other barges in tow of the Mollie Mohler on that river during that season?

A. Only in the loading of wheat from the upper end of the river.

Q. State what difference that was.

A. In loading only Joe Reynolds' wheat on the Errickson. When he had it ready for us, he had the preference.

Q. What was the freight on wheat per sack from Mankato to St Paul at that time?

A. I don't know.

Q. Was Reynolds charged any less freight for wheat, when his wheat was put on board the Errickson, per sack; and, if so, how much less?

21 A. He was not charged any less.

Q. Was the Eclipse an open or decked barge?

A. She was a barge made for bulk, having a roof on.

Q. If the wheat that was on board the Errickson had been on board the Mollie Mohler would it have been sunk or injured by that accident?

(Objected to as immaterial.)

A. We could not have got all that wheat on board the boat with safety.

(Same question repeated.)

A. If that wheat had been on the Mollie Mohler it would have loaded her down so we could not have handled her. She would not have carried it all, she then having all the freight on that I thought proper for her to carry; she then had on 800 to 1,000 sacks. When boats are towing you don't load them as heavily as when they are not, as they are not so easily handled.

Q. If the Errickson had had a roof on her would she have sunk with that accident?

A. To the best of my belief her roof would not have helped her any.

Q. If the Errickson had been decked would any water have got at that wheat?

(Objected to as immaterial.)

A. I don't believe a deck would have saved her from sinking. I had a barge decked sink with me this fall.

Q. How near to the water was the gunwale of that barge with the load she had on at the time of the accident?

A. From 18 to 24 inches out of the water the whole length, to the best of my recollection.

Q. How much would 300 sacks sink her after she had 700 aboard?

A. About 3 inches.

Q. About how much wheat do you call a sack of wheat?

A. About 2 bushels and a peck.

Q. Suppose that barge had been decked over, how would the water have got into her?

A. By pump holes and by deck holes.

Q. Anywhere else?

A. Not unless it went through the deck?

Q. Would she have sunk from that accident, unless she had taken in water enough to sink her?

A. I could not say.

Q. What did sink her?

A. Water and force of the current.

Q. Did you ever build or assist in building a steamer?

22 A. No, sir.

Q. Did you ever construct a barge?

A. No, sir.

Q. What knowledge have you of the sufficiency of a steamer or a barge if you never constructed either?

A. General knowledge from practice of handling them; nothing more than that.

Q. What is the average height of the bluffs on the Mississippi River, between Mendota and the point they terminate above the bridge-piers?

A. I don't know.

Q. Give us the height as near as you can—your best judgment in the matter.

A. About 250 feet.

Q. Are they continuous, or broken, or how, from Mendota down to the point were they stop?

A. My belief is they are continuous bluffs.

Q. How do they compare with the height of the bluff at Fort Snelling?

A. About the same height.

Q. In coming down the Mississippi River, at what point do those bluffs terminate?

A. The first open space there is just above the piers; that opening commences about ¼ to ½ a mile above.

Q. Where is, as regards the ferry, above or below?

A. Below the ferry.

Q. Above or below the cave?

A. My belief is it is above the cave.

Q. How far is it from the ferry to the cave?

A. About ¼ mile; scant that.

Q. If before you got to the cave, on the evening of May 12, 1866, the wind (to use the phrase of one of the witnesses who has testified here) was blowing strong enough to "split a fence-post," after you got by the protection of the bluffs, do you think you would feel it standing on the deck?

A. Yes, I do.

Q. Will you tell us, then, how hard you experienced the wind after you got from by the protection of the bluffs?

A. The wind was blowing in gusts. I did not feel the wind enough to bother until after we had passed the cave.

Q. How far above the cave did you first feel the wind?

A. I first noticed the wind in coming out from crossing at ferry.

Q. What made you notice it at that point before you had come from under the protection of the bluffs?

23 A. We had been running under the bluffs on right-hand side of river; had then crossed out over to the other side. To the best of my memory, that was when I first noticed that the wind was blowing; that would be about ferry landing.

Q. Is that the usual channel in coming down the river at that point?

A. That is our usual way of running.

Q. How far above the bridge-piers is that ferry landing on the same side with the cave?

A. About ½ mile.

Q. Where were you when the Julia first signaled you?

A. Just below the cave; a very short distance below the cave.

Q. Did you have your boat under command when she signaled you at that point?

A. I had.

Q. What is the reason, then, you could not give her the larboard side she asked for by her signal?

A. I wanted to make a stright run through the piers; by giving her the larboard side would have thrown me out of my course.

Q. Why, upon this occasion, did you wish to make a straight run?

A. At that stage of water we could run easier on account of the current between these two piers to the larboard of the blind pier than we could to run to the starboard of the blind pier.

Q. Is that the only reason you had for not giving way to the Julia?

A. I could not have got my boat in as good position as I then had her if I had given the Julia the side she first whistled for.

Q. Why not?

A. It would have brought us too close to the piers to have got her through where I wanted her to go.

Q. What is the usual course of steamers in passing each other at that point under ordinary circumstances, on the larboard or starboard side?

A. Descending boats have the preference of sides; in a place of that kind they will take whichever side they have laid out to run the piers.

Q. Now, what made you choose to pass on the larboard instead of the starboard on that occasion?

A. We could make a straight run. I did not think the current set as strong in there as it did at the blind pier. In running the blind piers my boat would have to lay more quartering with the current than she

24 would between the two that we attempted to run.

Q. What made you want to run that straight channel upon that particular occasion, and what influence had the wind upon you in forming that determination?

A. In seeing the Julia, to have passed to the starboard of her would have thrown me more quartering with the wind and current. In running

the way I did I could make a straighter run and not have to change the course of the boat; by not changing her course we would not lose our headway.

Q. What made all this precaution necessary at this particular time?

A. There had been accidents at the piers. We always took precaution when approaching them. We were always more careful with a tow than without one.

Q. Suppose that the wind had been blowing from the north instead of from the south, and as strong as it was then blowing from the south, what would you have done?

A. I should have run through the same two piers that we attempted to run.

Q. On which side of the Julia would you have passed with a northern wind as strong as you then had it from the south?

A. We would have passed on the same side.

Q. You don't think, then, that the wind has any influence whatever in governing your movements in approaching those piers to pass them?

A. Yes, sir, I do; the greatest kind.

Q. Just tell us what influence the wind has in your laying the course to pass those piers; what you do when it comes from different quarters.

A. A head-wind there would not affect us as much as a side wind. From a side wind we attempt to make the run as straight as possible.

Q. What do you call a head-wind at that point?

A. It would be a little north of east, if I am right in the points.

Q. What would be a side wind at that point?

A. Nearly a south wind, perhaps a little east of south.

Q. Why, on this evening of May 12, 1866, did you lay your course straight, and hold it against the Julia's signal, to pass those piers?

A. Just before that time I had examined that point with Capt. Bell, that was then running a daily boat from St. Paul to Mendota; he always run the piers that way. came to the conclusion that it could be easier made than to run the blind pier.

25 Q. Did the side wind from the south have anything to do with your laying your course at that time?

A. I had laid my course, and would have run that way in any wind.

Q. How often had you passed between those same piers coming down before?

A. I could not say positive, but would run that way about one-third of the time, and have run it often since.

Q. How deep was the water at that pier that you struck at that time?

A. To the best of my knowledge it was about 15 feet. I did not test it to tell.

Q. Tell us how you make your estimate of the depth.

A. From the pier that we struck. At a very low stage of water you can see the piling round the bottom of that pier. I should judge the pier was about 15 feet high. The water was nearly over the pier.

Q. How much water was on the blind pier then?

A. Four scant feet.

Q. How much water was your boat drawing?

A. About three feet. The Eclipse was drawing about two and a half feet, the Errickson about two feet, the Bauty not over 15 or 20 inches, to the best of my memory.

Q. What was the depth of the water between the blind pier and the pier to the starboard of the blind pier?

A. I could not say.

Q. Was the water at that time in there as deep as it was over the blind pier?

A. To the best of my knowledge it was deeper.

Q. Why would you not then have there a channel the width of the distance between the two piers, the water then being a depth of four feet over the blind pier?

A. The current being so strong there the blind pier made a bad break in the water. I would not run a boat over it.

Q. Did you know at that time how much, or about how much, water there was on the blind pier?

A. I did not know until the day following, when I measured it. The Hudson was then lying at Mendota, loading wheat. I wanted to find out if she could safely run over the blind pier, so I measured it and telegraphed to the captain of the Hudson how much water there was there.

Q. Between which piers did the Julia come up?

A. To the best of my knowledge she came to the north side of the blind pier.

Q. And which side did she whistle for you to give her?

26 A. She whistled for our larboard side; she wanted to go between us and the north bank.

Q. If you had given her that side and come across with your boat here, under the lee of this sand-bar on the south side of the river going down, and laid your course between the same piers, how could the current have effected you and brought you on that pier?

A. The current would have had more force against the boat; the boat would then have been laying more broadside to the current than she would have been, running it as we did. The wind then blowing from the right hand side of the river, I do not think we could have straightened our boat up.

Q. Why could you not have straightened your boat up with the wind blowing from the south?

A. The wind striking her more sideways; stern-wheel boats usually head into the wind.

Q. Was there wind enough to affect her motions at that time?

A. Not enough to affect her steering when we first heard the Julia's signal.

Q. How hard was it when you first heard the Julia's signal.

A. It was not blowing very hard then.

Q. How hard was it blowing when the Julia passed you?

A. There was a gust struck us right after passing the Julia. I could not state how hard that gust was.

Q. Give us some idea of its strength.

A. I cannot answer that.

Q. Why can't you answer it?

A. I don't know the force of the wind.

Q. What effect; was it a strong gust?

A. Not as strong as the gust that struck us at the piers.

Q. How far was this above the piers that the first gust struck you after passing the Julia?

A. To the best of my knowledge it was about a quarter of the distance between the cave and the piers. Between the cave and the piers is about a quarter of a mile, and this was one-quarter of the distance be-

tween the cave and the piers. It was ¾ of the distance between the cave and the piers above the piers.

Q. Did you make any attempt whatever on that occasion in that locality to back your boat to the wind and head her to the shore?

A. No, sir.

Q. Did you make any effort to do anything else than to run those piers; and, if so, what?

27 A. No, sir.

Q. Did you make any effort that day from the time you got from under the bluffs than to keep on your course and to run those piers? If anything, what?

A. No, sir.

Q. What is the width of navigable water at that time, of at least 4 feet of water, the water being 15 feet deep at the pier you struck?

A. We would use a third of the way across the river. To the best of my belief there was 10 feet all the way across the river from bank to bank.

Q. How long had you seen the Julia before she signaled you?

A. The first I remember of seeing the Julia was when we were running down along the bluff below the ferry.

Q. What would have prevented your coming to anywhere, from the ferry to the cave, or immediately below the cave?

A. We could have landed above the cave, but would not attempt it below the cave. I never saw any boats land in there below the cave.

Q. What kind of landing is there between the ferry and the cave?

A. There is no landing except at the brewery, a little nearer to the cave than to the ferry-landing. That is a bluff-bank. I never tried to land there coming down stream. I never had any business there coming down stream. There was no difficulty in making a landing at the brewery.

Q. Don't you know there is good landing for 150 yards below the cave?

A. No, sir, I don't.

Q. Do you know that there is not?

A. I do not think that there is a good landing there. There is first a low bank, then a rugged bluff-bank. The water was then over the low bank.

Q. With the water 15 feet at the pier how much would it be over the low bank?

A. I don't remember the height of the bank, and don't know how much water was over it.

Q. Is it unusual at that season of the year to have 15 feet of water at that pier, very unusual?

A. Some springs we have high water, and others we don't. Usually we have a high stage of water in the spring.

Q. Was this an ordinary or extraordinary affair to have 15 feet of water at that pier at that season of the year?

28 A. It was a high stage. It was unusual at that season of the year to have so much water there.

Q. What is the usual depth of the water at that locality in high water in the spring?

A. The water is very varying there, rising and falling. I could not give the usual depth.

Q. You were asked some distance back as to the breadth of the channel at the points on the river between the ferry and bridge piers with 15 feet water at the pier you struck. State what would be the breadth of

the river between those points with a depth not less than 4 feet at any point.

A. About (1,000) one thousand feet, I should judge—the breadth of the river in that stage of water.

Q. How deep would be the water down the slough on the left-hand side of the river going down with 15 feet water at the pier; that is, the slough between the north bank and Ross Island?

A. I never run it, and don't know.

Q. Is there water down that slough when there is but 4 feet at the pier you struck?

A. I never run that slough and know nothing about it.

Q. Your answer don't answer the question. Will you please answer it?

A. I don't know.

Q. How long have you been a pilot on that portion of the river?

A. I have had papers there since 1865. I got my papers in 1865, if I remember aright. I could not swear whether it was in 1864 or 1865.

Q. What time of the year was it, whether in 1864 or 1865?

A. In the spring of the year.

Q. Were you the pilot at the wheel of the boat upon this occasion, or what office did you fill? If not, who was at the wheel?

A. I was not the pilot, nor at the wheel. John Luckey was at the wheel. My office was captain of the boat.

Q. What had you to do, and what did you do with running that boat on that occasion at that point?

A. I consulted with the pilot as to which would be the best way to run the piers, and we both concluded as to the best way of running the piers.

Q. What else did you do besides consulting with the pilot, and where and at what point was that consultation had?

A. I got out our men on the head of our barges, with poles and fenders; talked with the pilot about the cave.

29 Q. Why was this consultation had upon this occasion?

A. A pilot and a captain will generally speak of the way to run any bad places.

Q. What made this place appear bad at this time when you got to the cave?

A. The piers are always considered a bad place to run.

Q. Is that all, witness?

A. We were afraid of the wind.

Q. Which way is the sweep of the channel after leaving the cave?

A. The channel there, to the best of my knowledge, is as marked by dotted lines on the diagram marked Exhibit "A," annexed to the deposition of Charles T. Spencer, now shown me.

Q. If that is the course of the channel, and the river at the time was 1,000 feet wide, or thereabouts, and the Mollie Mohler had sufficient power to move herself and her three tows, what possible difficulty would there have been in your putting the head of that boat to the wind and heading her up stream anywhere between the cave and the piers?

A. I would not attempt that; once getting the boat broadside with the current would be hard to straighten her up.

Q. What would be the difficulty if her power was greater than the current?

A. I don't think there would be room enough to run a boat and make that rounding to and head up stream—a boat having barges in tow.

Q. Would you not, in heading that boat towards the south shore, if she had power enough to overcome the force of the current, be moving her directly out of the course of the current?

A. No, sir; we would get her broadside with the current. She would have to lay broadside to the current to round her to there.

Q. Which is the stronger force, the current there or the Mollie Mohler's power of locomotion?

A. She has power enough to stem the current. In that position I could not say which was stronger.

Q. What difficulty would there have been anywhere between the cave and the piers in putting the Mollie Mohler's stern to the wind and backing her into the wind and heading to the north shore if she had power enough to move her under the circumstances against the current?

A. It would have laid her broadside to the current to have stopped her there and backed her round. We would have been broadside
30 on the piers before we could have straightened up; that is, if we had done so below this cave when the first gust of wind struck us; that is, the first gust we took any notice of.

Q. Would the Mollie Mohler have been able to come round there without barges?

A. I would not have attempted it without barges.

Q. Why?

A. I would rather run the chance of going through the piers.

Q. How strong is the current there?

A. About a four-mile current at that time, to the best of my belief.

Q. Your opinion is that the Mollie Mohler has not power to move herself when broadside to a four-mile current with three barges in tow. Is that so or not?

A. I know she could move herself, but at that place would be afraid that she would not straighten up.

Q. Why would you be afraid at that place that she would not straighten up in a four-mile current if she has power enough to move herself and straighten up?

A. I do not think there would be room enough to let her go round.

Q. Don't you think that 1,000 feet in breadth in still water is room enough to bring a boat around, if she has power enough to move herself?

A. I think a boat of the Mollie's size could be rounded to in 1,000 feet of still water.

Q. Have you any doubt about that?

A. I have not, in still water.

Q. Don't you round to and land in that river in a great many places where the water is not as wide as at this locality?

A. No, we don't.

Q. What do you do in such places, if you want to land for wood or for any other purpose?

A. Stop, back up, letting her head work in on the bank you want to land; or run to the opposite bank, letting her head catch and swing around.

Q. Had the Mollie power to do that in this locality, between the cave and the piers, or between the ferry and the piers, with three barges in tow?

A. She could have done it between the ferry and the piers. I would not dare to attempt it between the cave and the piers.

Q. If in going down the river at this locality, passing the ferry, and you also pass the landing at the brewery, if the weather is windy,
31 what resource have you after leaving the cave, other than shooting the piers, with a boat of the power of the Mollie Mohler, with three barges in tow?

A. I would rather run the piers than chance the bank after leaving the cave. You could heave an anchor out and let her head round on to the anchor; then you would have to run the chance of her dragging her anchor; I mean the way the wind was blowing then, there is nothing else that I would attempt. I would rather run the piers.

Q. How long have these piers been in this river?

A. I think they were put there in 1864—about that time; am not positive.

Q. Will you give us the course of the current at the point between the cave and the piers?

A. The current of the stream below the ferry crosses from the north shore to the south shore, and strikes the bank above the piers, then sets back out across the channel towards the piers.

Q. How is the water then on the other side of the river, the north side, as to current shortly above the piers?

A. I could not say.

Redirect examination.

Q. What was the size of these barges?

A. The Errickson and the Eclipse are about 100 feet long, about 20 feet beam; the Bauty is about 80 feet long and 15 feet beam.

Q. You spoke of running through between the same two piers whether there was a side wind or not. If there was a side wind blowing from the south, how differently would you manage in passing the piers than you would if there was no such wind?

A. We would hold her closer to the south pier, holding her there as closely as we dared.

Q. What was the objection to running over the blind pier at the time of this accident?

A. It made a break in the river, and we did not know how much water there was on it. We would not run it without knowing exactly how much water there was over the pier.

Q. How long would it take to back the Mollie Mohler with her barges into the wind, and get under headway to start for the shore, in case it were to be attempted?

A. It would take about a half a mile of space, and 15 to 20 minutes of time.

Q. Did you discover any wind that made you fear the passing of these piers was more dangerous on this trip than usual until you got below the cave?

32 (Objected to as leading, suggesting an answer argumentative and inadmissible.)

A. No, sir.

Recross examination.

Q. If you did not discover more wind on this day, since noon of the day, why did you lay up at Mendota, and what did you lay up there for?

A. We did. The wind was blowing all the afternoon. We laid up there to let the wind lull.

Q. How long prior to May 12, 1866, was the water 15 feet on the pier you struck?

A. I could not say.

Q. What time in the evening was it when you struck the piers?

A. Between 7 and 8 o'clock, to the best of my knowledge. On reflection, I now recollect that the ice knocked the top or a portion of the pier off, so that it was not as high at the time of this accident as it had

been and as I have stated, and I am therefore satisfied that the water was not as high as I stated, as I was judging from the height of the pier before the ice took off the top of it; but my statement relative to the depth of water on the blind pier is correct.

HENRY W. HOLMES.

Sworn to and subscribed before me this 5th March, 1868.

FRANCIS BLOODGOOD,
U. S. Commissioner.

THE HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, court commissioner.

The deposition of Charler T. Spencer, on behalf of the respondent, taken by and before said commissioner, at his office in the city of Milwaukee, March 4th, 1868. Present, John H. Van Dyke, esq., of counsel for the libellant, and John W. Cary, esq., of counsel for the respondent.

CHARLES T. SPENCER, being duly sworn on behalf of the respondent, deposes and saith:

I reside at La Crosse, Wisconsin; my occupation is pilot; have been for the last three years in the employ of the Northwestern Union and La Crosse and Minnesota Steam Packet Companies.

33 Q. Are you acquainted with the Mississippi River and its navigation from Fort Snelling to St. Paul?

A. I am.

Q. Do you know a point in that river opposite Pickerel Lake, between said points, where a railroad company have constructed piers for the purpose of building a bridge across said river?

A. I do.

Q. Are you acquainted with the channel of the river at that point, and the location of said piers?

A. Yes, sir; I know the location, but not the number of the piers.

Q. Look upon the paper now shown you, which is marked Exhibit "A," to be attached to your deposition, and state what it is, who prepared it, and what it is intended to represent.

A. I prepared it; it is a draft of the river from the Minnesota Valley Transfer House to a bend just above the ferry, intended to represent the location of the piers and the channel of the river. I should judge the whole distance of the river, as represented in the plat, to be two miles.

Q. Does this plat correctly represent the course of the channel and the piers at the point specified?

A. Yes, sir.

Q. Have you piloted steamboats with barges in tow down the river and through these piers?

A. Yes, sir.

Q. In case a steamboat was coming down with barges in tow and should be struck with a strong gust of wind from the south, while making the crossing from the point marked cave, through between the

piers, what would be the effect on the steamboat and barges? Make a full statement in relation to it.

(Objected to, as the question is hypothetical and not based on any facts in the case and in the nature of expert testimony, for which no ground has been laid.)

A. In a calm day, if we were to run the channel between the turn-table and the pier north of it, we would hold the boat looking on the pier, on account of the draft of water carrying the boat against the turn-table if we were to hold her straight down through. If we were to run the northerly channel we would pursue the same course in regard to the northerly pier of that channel; we have to come down in there slow; a sudden gust of wind from the south would have the effect of driving the steamboat against the northerly piers. I would not run through there with any hard wind. We have to run slow until we get the boat
34 in to between the piers; then we let on full head of steam to get her out as soon as possible, to prevent the current carrying her against the piers. We work her slow before entering the piers, because we have fuller control over the movements of the boat under "slow bell," and from the fact that we can lay her course as we wish.

Q. When running slow in the manner you have described, how would a sudden gust of wind, striking you one side, affect the course of the boat in comparison with its effect when running under a full head of steam?

(Objected to as hypothetical and inadmissible.)

A. It would affect her a good deal more under "slow bell."

Q. State whether the passage of those piers is or is not a difficult point to make at all times, and how is it in a high wind, or when the wind is blowing in sudden gusts from the south?

(Objected to as immaterial.)

A. It is difficult at all times; it is very difficult in a high wind, and more so still, I think, in sudden gusts of wind blowing from the south. A sudden gust of wind is liable to upset one's calculations—that is a pilot's calculations.

Cross-examination.

I am 21 years of age; was born January 4, 1847; my occupation in the employ of the company is pilot; I was licensed pilot May 23d, 1865.

Q. On what part of the river have you been acting as pilot since you have been licensed?

A. From La Crosse to Mendota; I have also run in the Prairie du Chien trade.

Q. Where were you in May, 1866?

A. I think I was on the steamer Keokuk; I was not on the Mollie Mohler. I know the Mollie Mohler and have run on her; she has two engines; I don't know their size; she is a small boat; I don't know the stroke of her engines. I think the Keokuk has cylinders six feet stroke. The Mollie Mohler does not compare with the Keokuk; I am not enough of an engineer to state the difference in the power of their engines; I don't know the relative power; I think the Mollie Mohler has about one quarter of the power of the Keokuk.

Q. At whose request did you draw this diagram, marked Exhibit "A?"

A. At the request of Captain A. M. Hutchinson.

Q. Who is Captain Hutchinson?

A. I have understood he is assistant superintendent of the company's line.

35 Q. When did you prepare that diagram?

A. Last evening.

Q. You have stated you did not know how many bridge piers there were across the river at that point; do you know now how many there are, and did you know how many there were when you prepared that diagram?

A. No, not the exact number.

Q. Who suggested the number delineated there?

A. Nobody but myself. Counting from the south, I know that the first four are right, including the turn-table, (delineated as round in the plat,) the second one from the south.

Q. Did you have any chart of the Mississippi River at thispoint when you projected this diagram?

A. No, nothing but my recollection.

Q. Is the diagram projected to any scale?

A. No designated scale; just my idea of the proportions.

Q. What is the width of the navigable channel of the river at the point where the piers for the proposed bridge are placed?

A. I don't know the number of feet. I cannot state about how much it is.

Q. What is the distance between the turn-table and the pier next north of it?

A. I don't know.

Q. Will you state as near as you can the distance between the turn-table and the pier next north of it?

A. I should think about 75 feet—about room enough for a boat and two barges to pass through.

Q. Is that room enough to pass through for a boat and two barges in very windy weather?

A. It would depend upon the direction and strength of the wind, power and capability of the boat in handling its tow. In very windy weather I don't think I would care to run it at all. In some winds I would not run any part of the river.

Q. You say run it; what do you mean by it?

A. I mean the channel at the piers.

Q. With the wind blowing hard enough from the south to "split a fence-post" when a mile above the bridge, what would you do if in command of the boat?

A. I would lay up with the wind blowing that hard.

Q. How near, in coming down the river, could you come to the piers and yet lay up, that is, stop your boat and come to without passing through?

36 A. After I had started out from the cave, which might be about ¼ mile above the piers, with the wind from the south blowing hard, so hard that I would not deem it prudent to run through the piers, and blowing in gusts, I would back her up, stern to the wind; that would throw her head up the river, and I would land in just below the cave; there is a flat bank there. If I could not run through the piers I would have to lay there. There is a bar opposite the cave, and there is a bar down the shore below the cave. If I went in below that point of which I speak, she would be grounded pretty hard; the bar commences to tail out just below the cave, and there is good landing for about 100 yards commencing at the cave, extending that distance down. In very hard wind there might be much difficulty in executing the movement I have described and landing where I have described. I have been on boats that could do it. Some boats don't handle as well as others, and that is a mystery among pilots. Generally a stern-wheeled boat will back her stern to the wind; that is one of their peculiarities.

Q. How near, with a stern-wheeled boat of the power of the Mollie Mohler, could you approach the piers, having 3 barges in tow, a high wind blowing from the south, and back her stern to the wind, and bring her around, and bring her to at the point you have designated—I mean with perfect safety?

A. I would not start but very little below the cave if blowing very hard and in heavy gusts.

Q. If the wind, when a mile above the piers, was blowing very heavy from the south and in gusts, what would good seamanship require you to do, if in command of the steamer Mollie Mohler with 3 barges in tow?

A. My duty would require me to come down far enough to look at the piers, and I would lay up at the spot I have designated without attempting to run through the piers.

Q. What would you apprehend in trying to run through the piers with a heavy wind and in gusts from the southard with the Mollie Mohler and 3 barges in tow?

A. Of coming afoul of the piers.

Q. If you should make the discovery a half a mile above these piers, which would be a ¼ mile about above the cave, that the wind was blowing strong from the southard with violent gusts, and increasing in force, what would good seamanship require you to do if in command of the Mollie Mohler with three barges in tow, laden?

A. The same as I did before—back her stern out to the wind and land her at the point below the cave.

Q. If you did that would there be any possibility of your getting on the piers?

A. I do not think there would.

37 Q. What would be your judgment of the seamanship of a person attempting to take a steamboat through these piers with three barges in tow if he should discover a half a mile above the piers that the wind was so strong and with such violent gusts that he could not keep command of his boat so as to keep her from flanking in the current?

A. I think he would be foolish to run when it was blowing hard enough to make him bound to hit the piers.

Q. What have you to say about the seamanship of a person under the circumstances as stated in my last question? Be a little more explicit.

A. I think it would be poor.

(NOTE.—Adjourned to 2½ o'clock p. m., when the parties appeared as before.)

Q. You stated in your examination that the distance between the turn-table or round pier was 75 feet or thereabouts, but you could not tell accurately in feet. Will you now state whether you have any, and, if so, what further information on that subject?

A. I have examined diagrams prepared by engineers with whom I am acquainted, one of which is prepared by Cha's A. F. Morris, civil engineer, resident at St. Paul; and the other prepared by S. P. Folsom, county surveyor of the county of Ramsey, State of Minnesota, resident at St. Paul, the latter of which maps is certified to by said county surveyor under date March 20th, 1867, and the former by the said Morris under date April 3d, 1867; and I am now satisfied in my own mind that the distance between the turn-table pier and the pier next north is (117) one hundred and seventeen feet in the clear, and that the distance between the pier next north of the round-table pier and the pier immediately north of that is (143) one hundred and forty-three feet in the clear, and the distance between the next two and between each of the remaining

piers, going north, is one hundred and forty-three (143) feet in the clear. I am also satisfied that in the diagram prepared by me there should be another pier added to those therein stated.

(The maps above referred to, made by said respective surveyors, are both now here present before the commissioner, and said map, or either of them, or copies thereof, by agreement now made between the respective proctors in this case, may be used upon the hearing of the case in the court in which the same is now pending, or any appellate court, and that the same may be used as evidence in such case.)

38 Redirect examination:

Q. How is the southern bank of the river from Mendota down to Pickerel Lake with respect to bluffs and being covered with timber?

(Objected to as immaterial.)

A. The bluffs run down to the bottom, I mean the bottom land, down to Lake Pickerel; then comes a slight bend, with timber on the banks.

Q. Are the bluffs timbered from Mendota down?

A. Yes, except where they are cut up by the railroad grade. This grade is cut in the side of the bluff, and takes up some of the face of the bluff; I don't know how much.

Q. If the wind was blowing from the south, either steadily or in gusts, how would it effect a boat coming down from Mendota until it got down and below the point marked "cave?"

A. I don't think it would have much effect.

Q. Would a south or a southerly wind be felt by the boat until it got below the "cave" to any extent on account of the bluffs and timber on the south side or right bank of the river?

(Objected to as directly leading, and suggesting the answer to the witness.)

A. No, sir.

Q. Were your statements made on your cross-examination relative to handling your boat between the "cave" and the piers and landing at or near the "cave" made with reference to any particular stage of the water; and, if so, what stage?

A. They were, in reference to a stage of water of about 5 feet between the 1st and 2d piers north of the turn-table.

Q. At that stage of the water between those piers, how would it be in the banks of the river?

A. It would be way down in the banks.

Q. Would that statement be affected or altered if the water was high and over the banks of the river? and, if so, how, and in what manner?

A. It would be, some. The water would be over the banks there, and I believe there are stumps on the bank, and we would not care about landing a boat there for fear of her coming in against the stumps too hard.

Q. What do you mean by you would not care about landing a boat there?

A. I mean I would not do it.

Q. In that stage of water, viz, high water, which would you consider the greater danger in case the wind were blowing as you have described, to attempt to land in the manner you have stated, or to go through between the piers?

39 (Objected to as immaferial and inadmissible.)

A. In that case in high water I could run over that blind pier. I should consider running through there safer than landing against stumps.

Q. If the wind was blowing from a southerly direction where would the boat first come in contact with it, so as to be materially affected by it, in coming down from Mendota to these piers?

A. She would not be affected until she got down to the cave.

Recross-examination:

Q. Since you were cross-examined this forenoon on the question of the wind there was an adjournment, was there not? With how many persons and with whom have you conversed on the subject of the wind and those bluffs?

A. I was asked by Mr. Cary if there were bluffs on the river, and I also spoke with you on the subject of the bluffs. I believe that is all.

Q. Did you not converse with Captain Hutchinson here in the office on that subject immediately after the adjournment?

A. I don't think I did.

Q. Did you since the adjournment?

A. Not with him since the adjournment. I do not think Captain Hutchinson was with Mr. Cary when I spoke to him about the bluffs.

Q. You state that in running from Mendota down to the piers you don't think a southerly wind would have much effect upon the boat until you got to the cave. How would you know whether it was blowing or not if it did not have much effect on the boat?

A. I would not know it did blow so hard from a southerly direction until I got to the cave. I might hear it among the trees a little. I don't think the surface of the river would be perfectly calm, as it is on a still day.

Q. You would know, then, from the surface of the river and the waving of the trees that it was blowing, but the extent or degree of the wind you would not know until you got down to the cave?

A. That is what I mean to be understood.

Q. In case, when you left Mendota, the wind was blowing hard from the south'ard, could you form any, and what, judgment as to the wind you would meet at the cave, and the quarter from which it would come?

A. I don't think I could.

40 Q. If you had had southerly wind all the afternoon of the same day, strong, and when you left Mendota it was from the same quarter strong, upon what theory would you calculate a change in its strength and its course in running from Mendota to the cave, a distance of four miles or thereabouts?

A. I should expect a lull in the wind at sunset. I don't know as I could calculate in a change in the direction of the wind.

Q. How long would it take the Mollie Mohler, with three barges in tow, to run from Mendota to the bridge piers, a distance of about four miles, in an ordinary stage of water, on or about the 19th of May, 1866?

A. I don't know.

Q. You have stated that you know the Mollie Mohler, and about her power. Will you state now about the time, as near as you can, that it, she would require to go with three barges in tow from Mendota to the bridge piers in ordinary good stage of water, and no bad luck at all?

A. About three-quarters of an hour, I should think.

Q. There are high bluffs at Mendota, are there not?

A. Yes.

Q. After coming out from behind those bluffs at Mendota into the Mississippi River, do you, or do you not, feel the wind stronger than when lying under the bluffs at Mendota?

A. I never had a particular case of that kind.

Q. Is there as much protection from the wind after you get out from behind the bluffs at Mendota as there is while lying under the bluffs at Mendota?

A. I think there is sufficient protection running down the river from Mendota.

(Same question repeated.)

A. At the Mendota landing we are laying in a bend in the Minnesota River. I don't think the wind from a southerly direction could be felt there at all. I mean that the landing is not in the bend, but just under a point in the bend. I dont think a southerly wind would have much effect on a boat lying just there.

Q. After leaving the protection at that point at Mendota, starting on your voyage for St. Paul, where would you first feel a southerly wind?

A. I think if you would step out into the middle of the river you would feel there.

Q. Would you not feel it still more at the junction of the Minnesota and Mississippi Rivers when you reached that point?

A. No, sir. There is a bend with heavy timber commencing right below the junction.

41 Q. How wide is the water in the Mississippi River at or below the junction?

A. There are islands in the river there. I think in the channel about 400 feet. I mean the course of the river where the channel is at that shute.

Q. What is the average distance of the bluffs of the Mississippi River between each other from the junction of the Minnesota and Mississippi Rivers and the bridge piers?

A. I should judge about half a mile. They are various widths, of course.

Q. Where are they widest apart, and what is their distance from each other at that point between the places aforesaid?

A. I think about half way between those two points, and there I think they are about ¾ mile apart.

Q. What is the course of the water from Mendota to St. Paul? Give it to us, as near as you can.

A. Pretty near east.

Q. If you had been running a boat, and during the afternoon, by the time you got to Mendota, you should find it so rough that you had to lay up for two or three hours; then leaving Mendota under the protection of the bluffs you speak of, and, on reaching the cave, you would still find it too rough to handle your boat, and blowing from the same direction as it did when you left Mendota, and full as hard as when you first laid up, what would be your judgment as to the wind, or change in the wind, during the ¾ of an hour that it would take you to run from Mendota to the cave?

A. I don't think, under those circumstances, there could have been any change.

Q. If you were in command of a boat, and had laid up at Mendota, four miles above, for two or three hours, by reason of a heavy wind from the south'ard, and leaving there, under the protection of the bluffs, you should reach the cave, or near there, and find the wind from the same quarter so heavy that you could not keep your boat in the channel, the water being an ordinary good stage of water, what, in your judgment, would be the right course to pursue at that point, the boat having three barges in tow, loaded?

A. If I could not manage the boat I would not know what to do. I

should exhaust every means to save the boat. I should try and land her somewhere.

Q. Would you try to run the piers under such circumstances?

A. I would not run the piers unless my boat was manageable.

Q. What would you do?

42 A. In case I could not keep my boat in the channel I should try to land her.

Q. Why would you try to land her rather than run the piers under such circumstances?

A. If I should run the piers, and my boat was unmanageable, I should most likely hit the piers.

Q. Suppose you had hit the piers, then what?

A. Why, she would be gone.

Q. You say, then, under the circumstances you would try to land her. Which would be the best seamanship, to run the piers or to try to land her, under the circumstances named?

A. It would be better seamanship to try to land her.

Q. To land her where?

A. There is only one place where they could land her, that is right below the cave.

Q. On your redirect examination you have used the words "very high water" and "very low water," or the counsel, rather, used the two expressions in questioning you; what do you understand by each of the two expressions with regard to that locality?

A. I understand by "very high water" to mean the banks full or over the banks, and by "very low water" I mean a low stage of water—at the piers three feet would be quite low water.

Q. What depth of water at the piers do you understand a good ordinary stage of water to be?

A. Four feet.

Q. How do you class five or six feet?

A. A good stage of water.

Q. You have stated three feet at the piers was a quite low stage of water; now state what depth of water at the piers would be a very high stage of water.

A. 10, 12, 14 feet.

Redirect examination:

Q. Was the landing at Mendota described by you above or below the railroad bridge at that point, the St. Paul R. R.?

A. The landing is above the R. R. bridge at Mendota, i. e., the Minnesota Central R. R. bridge at Mendota. The town of Mendota is below the bridge, but the landing I referred to is above the bridge on the Minnesota River.

Q. Is it all prairie there on both sides of the river, above there?

A. Yes, above the landing.

43 Q. In case you were passing down the river, between the cave and the piers, and your boat unmanageable, until you got within about a length or such a distance of the piers, you should then be struck by a sudden gust of wind, so strong as to render her unmanageable, or drive her from her course, could you under those circumstances land or do anything else except to attempt to go through between the piers?

(Objected to as immaterial.)

A. No.

CHA'S T. SPENCER.

Sworn to and subscribed before me this 4th day of March, 1868.

FRANCIS BLOODGOOD,
U. S. Commissioner.

District court of the United States in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE NORTHwestern Union Packet Co., claimant.

WESTERN DISTRICT OF WISCONSIN, *ss:*

Before Joseph Colt, commissioner, &c.

The deposition of John F. Luckey, on behalf of the respondent and claimant, on board of the steamer Addie Johnson, under way on the Mississippi River between La Crosse and Winona, July 25, 1870. Present, N. J. Emmons, esq., of counsel for libellant, John W. Cary, of counsel for respondent and claimant.

JOHN F. LUCKEY being duly sworn doth depose and say as follows, to wit:

I reside at La Crosse. My occupation is steamboat pilot. I have been pilot on the Mississippi and Minnesota Rivers about 16 years; have been engaged continuously as pilot during all that time. I was pilot on the Mollie Mohler, May, 1866, at the time she collided with the piers above St. Paul, and the barge Errickson was lost or sunk; the Mollie was
44 on her down trip on the Minnesota River to St. Paul, with three barges in tow, one on one side and two on the other, the two being arranged one behind the other.

Q. On the day of the accident how was the wind as you were coming down the Minnesota River?

A. Favorable until just before we got to the bridge.

Q. Did you stop at Mendota just above the upper bridge for a time?

A. We stopped there to freight—to put off something.

Q. What time did you leave Mendota?

A. A little before dark.

Q. From there down to a short distance above the piers how was the wind?

A. The wind didn't trouble us any till just before we got to the piers.

Q. Which piers did you run?

A. The left side of the first pier from the turn-table. I call it turnteble; some call it round pier.

Q. Was that the place that was usually run in coming down?

A. Yes, it was as good one side as the other.

Q. You may state fully what occurred and all the facts connected with the accident from the time of leaving the point of the bluff.

A. At the time we left the bluff we were on our way all right, until a squall of wind struck us and got us out of shape; we were so close to the pier that we couldn't right up until we struck it; we struck the larboard pier with the barge Eclipse and sunk her; the pressure of striking that made the upper barge, the Errickson, fill with water.

Q. How did this gale of wind strike you?

A. It struck us on the starboard side; when the wind blows the boat generally heads to the wind; that brought us sideways, so that by backing we couldn't straighten her up until we had struck the pier.

Q. How near the pier were you when this wind struck you?

A. I don't think we were 100 yards.

Q. State what kind of wind it was.

A. It came a quick gale, all at once, sideways; it come in a squall.

Q. Prior to this gale striking you were you in proper position and good shape to have gone through the piers safely, if this sudden gust of wind had not struck you?

A. Yes.

45 Q. After that gale of wind struck you was there any opportunity or possibility of rounding to or getting away from the pier, and not attempting to go through at that time?

A. No.

Q. After the gale struck you could the striking of the piers be avoided?

A. No.

Cross-examination:

Q. Whose duty is it on board a steamer to watch the weather, give notice and orders with regard to an approaching storm?

A. That would be a question; captain's and pilot's both, to look after the safety of a vessel and her cargo. The captain is the commanding officer, though.

Q. What effort, if any, was made to avoid the collision with the piers?

A. Backing up, straightening up to get through endways.

Q. Did you ever drop barges through those piers?

A. No, I never have; I never think it worth while.

Q. You had met a steamer shortly before you attempted the piers?

A. We met the Julia.

Q. Was there any misunderstanding about the side you were to pass?

A. No; I had my own choice.

Q. How did the weather at this particular moment differ from what it had been during the whole day?

A. It came up a quick squall of wind and struck us sideways.

Q. Some of the witnesses who have been examined, who were on board, told us that the wind came in squalls during the day, and that you laid up at Mendota on account of the wind; how is that?

A. I don't recollect about the wind, but I think we freighted there. I am not positive.

Q. What is your recollection about the wind during the day?

A. It was windy some all day, but it did not stop us from running on the Minnesota River, not before we came to the freight-house at the mouth of the Minnesota River; that is, not as I recollect.

Q. I suppose you would have gone down all right if it had not have been for the piers?

A. Oh, yes, if there had been no piers in the river; and we would have gone down all right if it hadn't have been for the gust of wind, too.

46 Q. How long had you been on watch, on duty, at the time of the accident?

A. I don't recollect. I don't remember as we had any but one pilot that trip; that is, myself.

Q. According to that, you must have been on duty yourself during the day?

A. Yes.

Redirect examination:

Q. Had you frequently passed through that pier, and have you since, with barges in tow?

A. I have, before and since, too.

Q. Have you ever had any difficulty there except this one time?

A. No.

Q. Would there have been any difficulty in your passing at that time with your tow but for this sudden gale of wind that struck you just as you were entering the pier?

A. There wouldn't have been any trouble at all if it hadn't have been for the wind.

Recross-examination:

Q. Did you make use of a gouger at that time?

A. I don't recollect whether we did or not; we hardly ever use them on the Mississippi; we do on the Minnesota; they are a good thing to have. I don't recollect whether we had one on board or not.

Q. I suppose they are not very useful where quick, rapid movements are necessary?

A. We use them in running short bends when the boat is under headway.

JOHN F. LUCKEY.

Read over to the witness and subscribed to by him before me this 25th day of July, A. D. 1870.

JOSEPH COLT,
Special Commissioner.

47 District court of the United States in and for the eastern district of Wisconsin.—In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE NORTHWESTERN UNION PACKET CO., claimant.

DISTRICT OF MINNESOTA, *ss:*

Before Joseph Colt, commissioner, &c.

The deposition of Orrin S. Hutchinson on behalf of the respondent and claimant, at Kimball & Davidson's office, St. Paul, Minnesota, July 21st, 1870. Present, N. J. Emmons, esq., of counsel for libellant; Jno. W. Cary, esq., of counsel for respondent and claimant.

ORRIN S. HUTCHINSON being duly sworn, doth depose and say as follows, to wit:

I reside at Prescott, Wis. My occupation is buying wheat. In 1866 I was clerk of the steamer Mollie Mohler, and was on board of her in that capacity on the 12th of May, 1866, at the time of the accident above St. Paul, at the piers, when the barges Errickson and Eclipse were sunk.

Q. What was the state of the weather that afternoon, as you were coming down the Minnesota River?

A. Boisterous, rough.

Q. Did you lay up on account of the weather; and, if so, at what point, and how long did you remain at the bank?

A. We did, above the bridge on the Minnesota River; can't say exactly at what point; we started to come down somewhere about sundown.

Q. What was the state of the weather and wind at the time you started to come down and until you got down to the cave, a short distance above the piers in the river above St. Paul?

A. When we started to come down the wind had moderated, and we thought we could go through without any trouble. Just before we got to the piers it commenced blowing hard again—a few lengths above the piers.

Q. How was the steamer Mollie Mohler manned, as to crew and other means of making her trip and the passage of the piers?

48 A. We were fully manned; we had a full complement of men; a good crew. We had an additional rudder in front, a "gouger" we call it, in front, to help us steer in that crooked river. A "gouger" is a long blade oar worked with a pivot on the stem of the barge, (the bow,) and used in difficult places to aid in steering the barge.

Q. How near to the piers were you when this gust or gale of wind struck you?

A. We were a few lengths above—so close that we could not get out of it—3 or 4 lengths above the piers—less than ⅛ of a mile.

Q. How severe was this gust or gale of wind that struck you there?

A. Strong enough to carry us on the pier. I couldn't say how strong it was; it was strong enough so as we struck the piers. It was a strong gust of wind.

Q. Did it come sudden upon you?

A. Yes. I couldn't say exactly how quick it was.

Q. What did the captain and crew do that you noticed to avoid going on the piers?

A. The captain was posted on the bow and roof of the deck, his post. He done everything a man could as far as he could. The men were all at their post so far as I could see. The captain had the men at their posts, and men at the "gouger" working that. One of the men at work at the gouger was knocked overboard and drowned.

Q. How was the current?

A. If I understand it, the current is quartering with the piers.

Q. Do you know about the velocity?

A. No.

Q. In your opinion was everything done by the captain and crew that could be to make the passage of those piers safely?

A. Yes.

Cross-examination:

Q. How many men manned this gouger at the time?

A. Sometimes two and sometimes four.

Q. How many on this occasion?

A. I could not say how many; there were several; it strikes me there were two or three or four, somewhere about that, that were standing out there in front ready to answer his order.

Q. You are not a sailing man, or accustomed to the management of a boat?

A. No.

49 Q. Do you mean to say that you think that one of these "gougers" can be made to serve any useful purpose whatever in the rapid evolutions of a steamboat?

A. Yes, as an auxiliary assistance in that river.

Q. I want you to think a moment, and see if you won't come to the conclusion that they are only used or made useful when the boats are under very slow motion, in order to enable the boat to make a sharp turn, and that they serve the purpose of a head line or a walking line.

A. I think they are useful whether the boat is going fast or slow.

Q. Did it work like an oar, or was it rigged like a rudder?

A. It was like a rudder in front; not like an oar at the side; it worked on a pivot in the centre, with a rope attached to extreme end inside to each side of the boat. (The witness here explains that this "gouger" was on one of the barges and not on the steamboat.) I can't say on which barge it was on, or on which side of the steamboat that barge was; but on which barge it was I can't tell no more than a man in the moon.

Q. Suppose that the steamboat had been light, without any tow, do you suppose she could have got away when that wind struck her—backed and turned?

A. It would have been a pretty close thing.

Q. How was the wind compared with what it had been during the day?

A. It strikes me that it was rougher than it had been just at that time; but I could not say positively.

Q. You met a steamer just before the accident, did you not?

A. Yes; the Julia.

Q. Did she have anything in tow?

A. I don't remember.

Q. How was this wind that you encountered; from what direction did it come?

A. Across the current; it seems to me it was sideways; I am not certain; I can't answer positively now; it is a good while ago.

Q. How many barges did you have in tow?

A. Three. I know there were two big ones; one on each side of us, and another barge back of one of the other two. The two front barges were sunk.

ORRIN S. HUTCHINSON.

Read over to the witness, and subscribed to by him before me this 21st day of July, A. D. 1870.

JOSEPH COLT,
Special Commissioner.

50 District court of the United States in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE NORTHWESTERN UNION PACKET CO., claimant.

DISTRICT OF MINNESOTA, *ss:*

Before Joseph Colt, commissioner, &c.

The deposition of John Haycock on behalf of the respondent and claimant, at the Northwestern Union Packet Co.'s office, S't Paul, Minnesota, July 21st, 1870. Present, N. J. Emmons, esq., of counsel for libellant; John W. Cary, esq., of counsel for respondent and claimant.

JOHN HAYCOCK, being duly sworn, doth depose and say as follows, to wit:

I reside in S't Paul. My occupation is pilot; have been a pilot some 19 or 20 years; have been running on the Minnesota and Mississippi Rivers. I was the pilot on board the Julia at the time the Mollie Mohler sunk her barges at the piers. I don't remember the date.

Q. Do you recollect what the character of the weather was on the evening of that day at the piers, about the time of the accident, especially as to the wind?

A. There was considerable of a stiff wind blowing, and it was quite blustering; it came in squalls; the squalls were quite severe, so much so that one of them striking a boat coming into the piers would throw her on to the piers.

Q. Is it possible to prevent these Mississippi or Minnesota River steamers from drifting or flanking when struck by sudden or violent gusts of wind?

A. No; it is impossible to prevent it.

Q. What would be the probable effect of a sudden and violent gust of wind striking a steamer sideways just as she was about to enter the piers at that point?

A. Well, there would be no possible show of preventing her striking those piers, the wind striking her in that direction.

51 Q. If well and skillfully managed and handled under such circumstances, would she be likely to strike the piers?

A. Yes, she would.

Q. Can a bridge be built across a navigable stream, supported by piers in the manner that these piers or any piers on the Mississippi River are located, that will not greatly increase the danger of navigation under such circumstances as stated above?

A. I don't think there can be one built.

Q. When subject to such gusts can a steamer be controlled by the best of skill and management so as to be kept within certain narrow bounds?

A. No, not unless she has a good deal of lee room.

Q. If, under such circumstances, she is to make a narrow passage anywhere, is she very liable to be driven out of her course against the obstruction?

A. Yes, very liable.

Q. If the Mollie Mohler, on that occasion, was headed as nearly as possible to the starboard pier, and held on her course in that direction, was that the proper course to pursue in attempting to pass the bridge as the wind then was?

A. Yes; that was the proper course to pursue. The wind, if I recollect right, was coming from the south.

Q. Had you passed through the pier, and by the Mollie, with your boat just prior to this accident?

A. Yes.

Q. As you passed the Mollie was she in proper position, and on the right course to make the passage, as the wind then was?

A. I think she was, as near as I could judge.

Q. If the steamer was driven by the force of the wind against the larboard pier, how would it affect the position of the boat and the barge on the starboard side of the boat?

A. It would turn the starboard barge under, the current being so strong there, and sink it. The boat would remain as she was, having barges on both sides to protect her.

Q. Did you see this boat after she had struck the pier at the time of the accident?

A. Yes, I saw her.

Q. How was she situated?

A. She was crossways of the pier, as near as I could judge. It was a little duskish, but her lights were sideways to me.

Q. Could any skill or management insure against an accident in such a position as that in case the boat was struck by a sudden and violent squall or gust of wind within three or four lengths of her entering between the piers?

52 A. I think not.

Q. Do you know John Luckey, the pilot, who was at the wheel at that time?

A. Yes.

Q. What was his skill and standing as a pilot at that time on the Minnesota and Mississippi Rivers?

A. I considered him a first-class pilot.

Q. Did you know Captain Holmes, the master of the vessel?

A. Yes.

Q. What was his ability as a captain and pilot?

A. I always considered him a good steamboat man.

Cross-examination:

Q. You have spoken of certain dangers and inevitable consequences in passing these piers. What remedy would you suggest?

A. I don't know as I could suggest any after once entering the piers.

Q. If I understand you aright, it becomes absolutely necessary now and then to sacrifice a barge or two in passing these piers in the circumstances supposed?

A. I don't know that it becomes absolutely necessary.

Q. Did you ever read Charles Lamb's origin of roast pig?

A. I don't know as I have.

Q. Well, he demonstrated that it was necessary to burn up a whole village to roast a pig.

(Respondent's counsel objects to the explanation of the counsel, but not to the roast pig.)

Q. How was the wind when you passed the pier with the Julia?

A. I think it was coming from the south.

Q. How long had the pier been built before that time?

A. I think a couple of years; couldn't say exactly.

Q. How long had the Mollie Mohler been on the river previous to that time?

A. Some two or three years, I think.

Q. Did you ever know any occasion of their being compelled to drop barges through those piers instead of towing them?

A. I have, in the early spring of the year, with a very strong current, dropped them through; but that's only in the spring, when the water is very high and the current very strong. In fact, I never did it until this spring.

Q. I think you have stated that you considered the passage of those piers as dangerous navigation in May, 1866, and it was so considered at that time, and that it needed extraordinary precaution in going through?

53 A. Yes; a man needs to use all extra precaution in going through those piers, and then he is liable to get beat at it.

JOHN HAYCOCK.

Read over to the witness and subscribed to by him before me this 21st day of July, A. D. 1870.

JOSEPH COLT,
Special Commissioner.

District court of the United States in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE Northwestern Union Packet Co., claimant.

DISTRICT OF MINNESOTA, *ss:*

Before Joseph Colt, commissioner, &c.

The deposition of James Houghton, on behalf of the respondent and claimant, at the Northwestern Union Packet Co.'s office, S't Paul, Minnesota, July 21st, 1870. Present, N. J. Emmons, esq., of counsel for libellant; John W. Cary, of counsel for respondent and claimant.

JAMES HOUGHTON, being duly sworn, doth depose and say as follows, to wit:

I reside in Carver, Minnesota. My occupation is steamboating on the Minnesota River, and that has been my occupation for 12 years. I am a licensed pilot.

Q. On the 12th of May, 1866, were you on board the Mollie Mohler when the accident occurred at the piers above S't Paul?

A. The date I do not know. I was on her at the time.

Q. How long had you been on her at that time on that day?

A. From S't Peters down; about 2 days.

Q. Did she lay up above the bridge at Mendota, and wait for the wind to go down?

A. Not that I recollect of.

Q. What time of day was it that she started from Mendota to come down to S't Paul?

54 A. Perhaps about 7 o'clock in the evening; I should judge about that time.

Q. How was the wind in coming down from Mendota until you got near the piers?

A. It was blowing very hard.

Q. Until you got within a short distance of the piers was the wind blowing so to render it unsafe to pass through the piers?

A. It was not.

Q. Had you frequently run those piers?

A. Yes.

Q. Between which piers did the Mollie attempt to pass?

A. She was coming through on the north side of the pier, north of the turn-table.

Q. What was the distance between the two piers that she was passing between?

A. They say 115 feet—that is what the superintendent tells me, but I don't know what it is. I should think it was somewhere about that.

Q. Which piers was it usual at that time to pass between?

A. She was running where we always run at that time—that was the channel.

Q. How was her tow as to its size and the manner in which it was arranged?

A. Her tow was a light tow for the boat and arranged well.

Q. How was the capacity of the boat for handling the tow?

A. She was capable of handling them in any place where a boat could handle them.

Q. How was the wind when the boat come within a short distance of the pier?

A. The wind blowed very hard just as we come close to the piers, so as we had no chance to get out.

Q. Was this a sudden gust of wind that struck the boat at that time?

A. Well, yes, it appeared to be.

Q. In what direction did the wind come from, and how did it strike the boat?

A. Nearly south. It struck the boat on the right side, and blowed her on to the larboard pier.

Q. What was the effect of the boat's striking the pier?

A. It sunk the two barges.

Q. Were you out where you could see the manner in which the boat was handled and managed?

A. I was on the roof at the time.

55 Q. State whether the boat was well and skillfully handled, and whether, in your opinion, the accident could have been avoided after this gust of wind struck the boat.

A. The boat, I think, was well handled, and I don't think it could have been avoided.

Q. Did you know the pilot of the Mollie Mohler?

A. I did.

Q. What was his skill and ability as a pilot?

A. The best pilot on the river. He run with me for years. This pilot was John Luckey. I had known him for about 10 years. He had run most of the time with me until that accident.

Q. In your opinion was there any negligence or mismanagement in the handling of the boat that caused this accident, or was it wholly the result of the sudden violent gust of wind?

A. I think the boat was handled perfectly well, and the only cause of the accident was the sudden gust of wind.

Cross-examination:

Q. In what capacity were you on board of the Mollie Mohler at that time?

A. I was just coming down on her watching the barges that I had loaded, and which she had in tow. I was not engaged on her at that time in any capacity. I loaded one of the barges for the Packet Co. and was in the employ of the Packet Co. I am now in the employ of the Packet Co. as captain of the Mankato, running from St. Paul to Carver, on the Minnesota River.

Q. You have stated that the tow which the Mollie Mohler had was a light tow for the boat. Tell us what you would call a heavy tow?

A. I would call four large barges a heavy tow; these were small barges.

Q. How long had those piers been in the river there?

A. I suppose they had been built about six years.

Q. Did those piers increase or decrease the danger of the navigation there, or did they have any effect on it at all?

A. They increased the danger a good deal.

Q. How long had the Mollie Mohler been on the river at the time this accident happened?

A. About two years.

Q. Then it follows that she was built and navigated with express reference to these piers?

A. No; I meant that the piers were built five or six years from the present time.

56 Q. When you said that it was a light tow for the boat did you mean that it was a light tow with reference to the dangers of passing that bridge?

A. I mean it was a light tow for that boat in any place where a boat is capable of running a tow.

Q. You say you think she was well handled and managed in all respects; what do you say as to the manner of the use of the gouger which they had, and as to the propriety of having one in use at that time?

A. That is on the barge—we use that on the Minnesota River, in the crooked river; we never use any up here, or in passing the bridge, or in this river.

Q. Do you know the tonnage of the Mollie?

A. I forget what she was. She was 22 foot beam by 125 to 130 feet long, and her draft was about 20 inches.

Redirect examination:

Q. Was the gouger used at these piers at this time?

A. I don't know whether it was or not.

Q. Would there be any objection to using it if the wind was drifting the boat? Might it not be of some use?

A. I don't know as it would in that case.

Q. Would it have any bad effect to use it?

A. I think not.

Q. Do you recollect that one of the men on board of the barges was knocked overboard and drowned there?

A. There was one knocked off from the head of the barge and drowned.

Q. Do you know what he was doing?

A. I do not. Some one said that the oar or the gouger knocked him overboard.

Q. When the boat struck the pier how did it turn? Did it swing around sideways to the current?

A. It swung around sideways and nearly headed up again—nearly around.

JAMES HOUGHTON.

Read over to the witness, and subscribed to by him before me this 21st day of July, 1870.

JOSEPH COLT,
Special Commissioner.

57 District court of the United States in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE Northwestern Union Packet Co., claimant.

DISTRICT OF MINNESOTA, *ss:*

Before Joseph Colt, Commissioner, &c.

The deposition of Edwin Bell, on behalf of the claimant and respondent, at Kimball & Davidson's office, St. Paul, Minnesota, July 20, 1870. Present: N. J. Emmons, esq., of counsel for libellant; John W. Cary, esq., of counsel for claimant and respondent.

EDWIN BELL, being duly sworn, doth depose and says as follows' to wit:

My occupation is that of captain and pilot on the Minnesota River, from St. Paul to Redwood. I have been a pilot and licensed as such a number of years. For the last three years I have been under the employ of the Government, on river improvements, under General G. K. Warren.

Q. For how many years have you been engaged as captain and pilot navigating the Minnesota River?

A. I think it was in 1854 that I commenced steamboating, and have been engaged navigating on the Minnesota River ever since; except last year I worked on the Wisconsin River, and I think one season I was in Michigan.

Q. Had you previously to 1854 had any experience in navigating the rivers of this country?

A. Not on the rivers. But I had had a good deal of experience on Lake Ontario; used to go backwards and forwards a good deal on the lake, and had a small boat of my own.

Q. In May, 1866, were you acquainted with the Mississippi River from Mendota to St. Paul, and the situation of the railroad bridge then building a short distance above St. Paul?

A. I was well acquainted with it. I used to run it sometimes four times a day. Was then in the employ of Captain Davidson, of the Packet Company.

58 Q. Was the bridge completed then, or only the piers up?

A. The piers were not finished, all of them.

Q. How was the turn-table pier, and what was it then called by boatmen?

A. It was called the turn-table pier—round pier. It wasn't built up at that time very high. In low water, very low water, it was out. I didn't run that a very great deal when I could avoid it; used to run the other on account of the turn-table pier being blind. In high water always ran to the left of the pier next to the turn-table coming down.

Q. Do you know John Luckey?

A. Yes.

Q. How long have you known him, and what is his business, and how long has he been engaged in it; and what is his knowledge and skill in that business?

A. I think I have known him about 15 or 16 years. His business is

that of a pilot on both the Mississippi and Minnesota Rivers; that is, he has run with me a good deal on both rivers. I think he has been engaged in the business of a pilot 15 or 16 years; it might be a little more. I consider him a number one pilot, and always did. I know he is a good pilot.

Q. Do the steamboats on the Mississippi or Minnesota Rivers have, or can they have, keels?

A. I have never seen one with a keel, and I have seen the bottom of a good many steamboats. I have never heard of one having a keel. I have seen keels on the lakes, but never on the river. They can have keels on the Lower Mississippi, I suppose, but I don't think it would be advisable even there; but in the Upper Mississippi River we never use keels.

Q. What is the effect of sudden gusts of wind striking these boats sideways or quartering?

A. It makes them flank over—shove to one side.

Q. What is the nature of the shore and bluffs from Mendota to these piers, and how is the wind affected by them?

A. Well, some points are affected more than others. There is bluffs and high lands both—below Mendota, after we get below the island, there's a high bluff—then it, the bluff, runs way down to Pickerel Lake; there the bluff takes a little circle back. It's quite a distance from the bluff to the river at Pickerel Lake, on the west side of the river, to and below the piers. The other side of the river, after we cross over to what we call the brewery or the ferry, there is a high rock bluff, which descends slightly down to the cave, to where we make our crossing. When
59 we keep under the bluff along by the elevator we don't feel the wind much, until we start to make our crossing there, where it would affect the boat anywheres from there down to and below the piers.

Q. Were you acquainted in the year 1866 with the steamboat "Mollie Mohler," and did you know her capacity as a tow-boat?

A. I was well acquainted with her, and knew her capacity as a tow-boat. I always considered her about the best boat in the Minnesota River; of course she wouldn't compare with Mississippi River boats.

Q. If you were coming down the river through these piers with that steamer, with barges in tow on each side, and the water was then four feet deep over the turn-table, a bridge-pier, as it then was, between which piers would you have passed?

A. I always preferred passing the pier next to the turn-table, that is, to the larboard side of the pier standing on the larboard side of the turn-table pier coming down the river, because we considered it wider, and the current seemed to run straighter down there, and I could point the boat and she would almost run through herself. I went through there so often, three or four times a day, that I knew exactly how to run it.

Q. If you were coming down with the Mollie Mohler with barges in tow on each side, in what direction would you point or head your vessel, with respect to the piers, to make the passage?

A. That's all owing to circumstances—owing to the wind.

Q. If there were occasional gusts of wind blowing from a southeasterly direction?

A. I would keep her up as near the windward pier as I could, so as to keep her from flanking down on to the leeward pier, as that is what we are most afraid of—the flanking.

Q. If the wind was blowing from the southeast, which would be the

windward pier at that point, in passing between the two piers as stated above?

A. The windward pier would be on the starboard side coming down.

Q. If you were making that passage with the steamboat and barges, as above supposed, and a sudden severe gust of wind from a south-easterly direction should strike you within four or five lengths of the piers, what would be likely to be the effect of it?

A. Unless she was held up to the windward pier, she would certainly flank on to the leeward pier. I have been caught that way myself.

60 Q. Would it be possible in all cases to hold her up to the windward pier, in all circumstances?

A. No, you can't always get them there—there's where the trouble comes in with steamboats.

Q. State whether that would be a danger that could not be guarded against by good seamanship.

A. I don't care how good a pilot he is, if he gets caught in that way, with a gust of wind, it will flank his boat, and he can't handle her. Working between the piers and in the wide river is a different thing. You haven't room to handle your boat, and everything must be done in a minute.

Q. Under the circumstances supposed with that steamboat with a barge loaded with wheat on each side, what would be the probable effect if a gust of wind struck with sufficient force to drive the larboard barge against the upper end of the pier?

A. As far as I am concerned, I never struck the pier myself all the time I was running, but a boat would naturally flank with the wind. If she struck the pier with force the effect would be to knock a hole in the barge.

Q. If the striking was so as to fetch the boat partially or entirely across the current, how would it affect the barge on the starboard side at that stage of water?

A. If she was right across the current the effect would be, according to my view of it, the barge on the upper side would careen over and fill, or take water if she was loaded deep.

Q. State whether these results that you have named would naturally and legitimately flow from such an accident, notwithstanding the boat was handled carefully and with good seamanship, under such circumstances.

A. Well, if the boat was handled right, as I stated before, however good the seamanship, if a gust of wind suddenly strikes her, she can't be handled so near the pier, as there's no room to handle her as there would be in the wide river. When we make our crossing to enter the pier, and when we are near entered, the calculations is broke up. If the wind strikes us just as we get into the pier you have to make new calculations. You hav'n't room to make new movements, we have to do the best we can, hug up to the windward pier as near as we can. Those results would certainly be likely to follow.

Q. Under such circumstances if you were to make that passage would it be good seamanship, in your opinion, to lay your boat quartering with the channel, headed for the starboard pier?

A. I should certainly head it for the starboard pier, that would be the windward pier, and would do it as soon as possible, too. That would be the only safety at all.

61 Q. Would that position be the position in which you could go through in safety if you could go through safely at all?

A. That is a pretty hard question to answer; unless I could see the position of the boat or have it mapped out to me, her position, then I could answer it. If her stern should hang over to the left-hand side of the river, or right-hand side of the river, I couldn't tell about it then, it would be impossible. If I knew on which quarter her stern hung on, the left-hand or right-hand side of the entrance of the pier, then I could tell.

Q. If, under such circumstances, you met a steamer going up stream just before you were to make the passage, could you tell which side it was best to have the steamer pass, from your knowledge of the situation?

A. Yes.

Q. On which side?

A. We know the short crossing so well there, every pilot does, we can tell in a moment whether a boat is in our road or not; when a boat is going up stream blow for their side first, and if the down-stream boat don't like it, if it don't suit her in regard to her crossing, she has the choice; the down-stream boat always has the choice, the up-stream boat answers the whistle of the down-stream boat, and gives the down-stream boat her choice. Without knowing exact locations, I could not say which side the Mollie Mohler should have directed the up steamer to take.

Cross-examination:

Q. What was the tonnage of the Mollie Mohler?

A. I don't know, I am sure, what her tonnage is. I never heard what it is; we call her a good-sized Minnesota River boat.

Q. Is she a stern or side-wheeled boat?

A. She is a stern-wheeled boat. I don't know the power of her engines, have never heard it stated, although I have been aboard of her and steered her, too; she had two engines.

Q. Which is the superior for management in difficult passages like the bridge in question, and under the circumstances to which your attention has been called, a stern or side-wheeled boat?

A. I think I would prefer a side-wheeled boat. In making a bend it is better. I think a side-wheeled boat is superior in management to a stern-wheel boat, although there are stern-wheel steamboats with balanced rudders that handle very well, but I give my preference to a side-wheel boat. I have not had as much experience with side-wheel boats as with stern-wheel boats. A stern-wheel boat is the boat used on the Minnesota River as a general thing.

62 Q. How long had those piers been there, previous to 1866?

A. I can't tell exactly the year they were built in.

Q. Where is this cave you have spoken of?

A. In the Mississippi River, the first crossing we reach after passing the piers, going up—it is on the right-hand side going up—it is on the left bank of the river.

Q. You have spoken in your deposition here of consequences that would flow in given circumstances; I suppose that such consequences would depend in a great measure upon the capacity of the boat, and her power to handle herself and her tow, would they not?

A. If a boat has not power to handle herself well, we would not reckon her much of a steamboat. In regard to the tow, I know I have handled two barges with a smaller boat than the Mollie Mohler, and with a good deal less power.

Redirect examination:

Q. What kind of boats are usually run on the Minnesota River, stern-wheel or side-wheel steamboats?

A. Stern-wheel boats, you may say almost exclusively.

Q. Can't stern-wheel boats be used on smaller streams than side-wheel boats?

A. I don't know what to say about that question. I am sure.

Q. Could side-wheel boats of any considerable tonnage be used on that river?

A. They could in high water. We prefer stern-wheel boats, because we can get them in on less water.

EDWARD BELL.

Read over to the witness, and subscribed to by him before me, this 20th day of July, A. D. 1870.

JOS. COLT,
Special Commissioner.

63 United States district court, district of Wisconsin.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE NORTHWESTERN UNION PACKET CO., claimant.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, court commissioner.

The deposition of William Kahlow, on behalf of the respondent, taken by and before said commissioner, at his office, in the city of Milwaukee, January 25th, 1868. Present, John H. Van Dyke, esq., of counsel for the libellant, and John W. Cary, esq., of counsel for the respondent.

WILLIAM KAHLOW, being duly sworn on behalf of the respondent, says:

My age is 29, I think; I reside in Henderson, Minnesota; my occupation has been steamboating for the last four years; I know the steamboat "Mollie Mohler," used in navigating the Mississippi River; I was employed on board that steamboat in the month of May, 1866, as mate. I remember that steamboat making a voyage in the month of May, 1866, from Mankato, on the Minnesota River, to St. Paul, on the Mississippi River; I cannot remember the exact date at which we left Mankato.

Q. What barge, if any, had she in tow when she left Mankato?

A. The barge called the "Erricson."

Q. To whom did the barge "Erricson" belong at that time?

(Objected to, as being immaterial, and inadmissible under the bill of lading and written contract entered into for the transportation of the property in question; evidenced by the bill of lading which governs the rights and remedies of the libellant under his subrogation as insurer of the property specified in the bill of lading, and that the respondent is estopped from contradicting the same, or its legal effect in the hands of a third party, relying upon its verity.)

A. It was bought by Charley Huffsmith, the agent of Joe Reynolds, from Erricson.

Q. Was this barge what you call an open barge?

64 A. Yes, an open hollow barge—not decked.

Q. Do you know the age of the barge?

A. I know she was a new barge, a year or two old,—what you call a new barge.

Q. What was she loaded with?

A. With wheat, in sacks, if my recollection serves me right; she had between 900 and 1,000 sacks of wheat on board—am not perfectly certain.

Q. How much was she capable of carrying?

A. I think she was capable of carrying between 1,700 and 1,800 sacks, and then not be overloaded.

Q. Was there at this time a good stage of water in the Minnesota and Mississippi Rivers?

A. There was a good steamboat stage of water for those rivers.

Q. Did you take any other barge in tow on this voyage?

A. Yes, it was at St. Peter, I think, where we took the "Eclipse" in tow; she was loaded with bulk wheat.

Q. Did you take any other barge in tow?

A. Yes, when we got further down the river at Belle Plain, a small barge by the name of "Bauty"—we loaded her at that point with sack wheat.

Q. Then you started from Belle Plain to St. Paul with the barges "Erricson," "Eclipse," and the "Bauty" in tow; state how those barges were attached to the steamboat, and their relative positions in regard to the steamboat.

A. We had them in tow; the Eclipse was on the larboard side of the steamboat, and the Erricson on the starboard side, the "Bauty" was, if my memory serves me right, on the starboard side, in the stern of the "Erricson."

Q. How were those barges fastened to the steamboat?

A. About a third of the length of the barges Erricson and Eclipse projected forward of the bow of the steamboat. It is the usual way of fastening barges in tow on that river. It gives the steamboat more power to handle them.

Q. Were the barges securely and well fastened to the steamboat?

A. Yes.

Q. State what happened on your voyage after you left Belle Plain.

A. We got along very well until along the latter part of that day; there was considerable wind, it blew hard; we landed at Mendota, at the mouth of the Minnesota River, and we either put on some little freight, or put off some household goods we had for that place;

65 we laid up there, the wind was blowing so hard, to wait until the wind went down, and the wind finally calming down some, we started out, thinking it was still enough to go through. As we got within a mile or a mile and a half of the piers—these piers are in the Mississippi River from 2½ to 3 miles above St. Paul—I should think there are five or six piers—stone piers—they were for a railroad bridge; there are but three piers in the channel, one on either side of the channel proper, that project in common stage of water about 15 feet; the third pier in the channel is midway between the other two, and is what we call a blind pier, that is, in a high state of water it is submerged. The distance from the center pier to each of the other piers in the channel is, I should judge, from 100 to 125 feet. When we got within a mile or a mile and a half of the piers, we saw the steamboat Julia, and she whistled to us to take the starboard side; I think the wind blew so hard

that we had to take the larboard side of her. (That would be her starboard side.) It threw us out of our course; the wind blew in such gusts, and so hard, in such a hurricane, that we could hardly have managed an empty boat, and we were so near the piers that we could not get our course again. When we passed the Julia, we were somewhere near a half a mile from the piers; we couldn't get our course with all we could do, and the larboard barge, the Eclipse, struck the pier on our left, to the larboard of the blind pier, and there the barge Eclipse sunk.

Q. How is the current of the river at that point?

A. Swift current any time, and at a good stage of water very swift.

Q. Between what piers were you attempting to pass when you struck?

A. Between the larboard pier and the blind pier, the usual channel.

Q. What happened to the barge Erricson?

A. She sunk at the same time, or immediately after, I know, because I was on board of her at the time, and had to hurry to get off.

Q. Tell, as near as you can, what was the cause of the Erricson sinking.

A. From the sudden blow that we struck the pier and the Erricson being on the upper side and broadside to the current, it kind of tipped her and filled her at once; it sort of dammed up the water, the water went over her side.

Q. How quick did she sink after you struck the pier?

A. Almost immediately; I was on board of the Erricson at the time, and had to hurry to get off in time to save myself.

Q. How large a crew had you on board the steamboat?

66 A. Seventeen men, if not more, besides the officers. It was a big crew for that boat; boats of that size don't usually carry more than 10 or 12 men, and that is considered a good crew.

Q. State what efforts you made to prevent the boat and barges from striking the pier.

A. We had all the men out on the heads of the two barges, some with poles and others handling the oars at the head of the barges; these oars are used on that river to guide boats out of bad river; the stem' of these oars are from 30 to 40 feet long; they are fastened to the bows of the barges, so as to make them balance; their blades are 10 to 12 feet long of plank, and from 12 to 16 inches wide. When the pilot wants to take a turn to the starboard we throw these in on the right, to make the barges take the same course as the steamboat, to assist in steering and handling the barges; the two deck hands were on board the steamboat, in case the boat was in danger, ready to cut the lines to free the boat from the barges. We threw in a rope fender between the barge and the pier.

Q. Did you do all that you could do to prevent the accident?

A. We did.

Q. What time of day was it when the accident occurred?

A. Seven or eight o'clock in the evening; it was dark, but we could see the piers well; the stars were shining.

Q. After the wind struck you and changed your course, could you have made the landing?

A. No.

Q. After you passed the Julia, were you able to straighten up and get your course in the channel?

A. No; we were too near the piers, and the wind was blowing too hard.

Q. Was there plenty of room between the two piers that you attempted to pass between, for the boat and the three barges?

A. Yes; we have been through there with the same boat and ten barges.

Q. Were you able to save any portion of the wheat on board the barge Erricson?

A. No; she went down so sudden, and clear under water; the water where she sunk was about eight feet, I think.

Q. How deep a hold had the barge Errickson?

A. From four and a half to five feet, I think.

Q. Just after you passed the Julia, did a strong gust of wind strike you?

(Objected to as leading; question withdrawn.)

67 Q. What was the state of the wind just after you passed the Julia?

A. Blowing very hard and by gusts.

Q. Was it harder than it was just before or after the time of passing the Julia?

(Objected to as improper and leading.)

A. After we passed the Julia the wind was harder than it was before; and we all remarked that a sudden gust of wind struck us just before we struck the pier.

Q. Describe the state of the wind from the time you passed the Julia until you struck the pier.

A. All the statement I can give is that it blew as hard as I ever saw, a perfect hurricane, enough to split fence-posts.

Cross-examination:

Q. How long have you been boating?

A. About 13 years ago. I boated for about one and a half seasons on the Minnesota River, and then quit it until about four seasons ago; since which time, until about the middle of last season, I have been constantly boating.

Q. How long have those piers been in the Mississippi River?

A. I should judge about three years, perhaps, more or less—they are well known to boatmen. The pilot, who is licensed, is supposed to know the current there.

Q. You stated on your examination-in-chief that the current is very rapid there. Is it ordinarily rapid or subject to changes?

A. It is subject to changes dependent upon the stage of the water; in high water, rapid; in low water, not so rapid.

Q. What was the average stage of water there on the 14th of May, 1866?

A. It was a good steamboat stage.

Q. Is the Mollie Mohler a large or small boat?

A. For that river she is a moderate-sized boat; a small boat compared with the boats that run on the Mississippi; she is 125 feet long, 24 feet or a little more beam; she has two engines. I am no engineer; it is outside of my business; I know they are of good power. The steamer had a cargo on board, wheat and household goods. I cannot state the amount of wheat on board at that time; have had 1600 sacks on board, part wheat and part barley.

Q. What was the length of the barge Eclipse?

A. I think she was about 108 feet.

Q. What was her beam?

68 A. From 22 to 24 feet, I think.

Q. What was she loaded with?

A. With bulk wheat taken in at St. Peters. I cannot state definitely

that we had to take the larboard side of her. (That would be her starboard side.) It threw us out of our course; the wind blew in such gusts, and so hard, in such a hurricane, that we could hardly have managed an empty boat, and we were so near the piers that we could not get our course again. When we passed the Julia, we were somewhere near a half a mile from the piers; we couldn't get our course with all we could do, and the larboard barge, the Eclipse, struck the pier on our left, to the larboard of the blind pier, and there the barge Eclipse sunk.

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Q. What was she loaded with?

A. With bulk wheat taken in at St. Peters. I cannot state definitely

how much wheat she had on board; we did not load her; she might have had 2500 bushels on board, perhaps not that.

Q. What was the length of the Erricson?

A. About the same length of the Eclipse, and of about the same beam,

Q. As the Erricson was lashed to the steamer, was her stern forward or abaft midships of the steamer?

A. Her stern was about midships of the steamer—might have been a little forward or abaft. The Bauty was astern of the Erricson.

Q. State the length of the Bauty.

A. She might have been about 80 feet long, about 11 feet beam—a small barge.

Q. What was she loaded with?

A. With wheat—500 or 600 sacks I think, that would be from 1000 to 1200 bushels—the sacks, if well filled, would average about 2 bushels.

Q. How far was the stern of the Bauty astern of the steamers stern?

A. It was by some—how far I couldn't state.

Q. How far is Mendota above these piers?

A. Between 3 and 4 miles, I should judge.

Q. What time did this steamer with the barges arrive at Mendota?

A. Well, it was some time in the after part of the day. We laid some time to wait for the wind to go down.

Q. Why did you lay there for the wind to go down?

A. Because it was blowing so hard. The other bridge was so near by that we could not have got sufficient headway on before we would have struck the bridge.

Q. How long did you lay at Mendota?

A. Quite a spell; it might have been an hour.

Q. Had you had high winds all day?

A. Not all day—until the after part of the day.

Q. How did the wind that you had in the after part of the day compare with the wind you usually have at that season of the year?

A. Harder than the wind we usually run in. It blew in gusts—by spells very hard. We laid there because it blew too hard to run the piers—the first piers.

Q. How as to the second piers?

69 A. The other piers are some 2 or more miles below there and lay in an open country, and I could not tell how it was blowing there at that time.

Q. How wide are the piers, how far apart, at the bridge at the mouth of the Minnesota?

A. About the same distance as it is below there, from 100 to 125 feet.

Q. How is the current there?

A. The current of the Minnesota River is not near as swift as that of the Mississippi, especially the lower part below the rapids.

Q. Which piers are the most difficult to run; those of the Minnesota bridge, or the piers below where you struck?

A. That depends upon the water. At some times the Mississippi River is high and the water is dead, at the upper piers that is at the bridge. The lower piers—at some time the current is swifter at high water than it is in low, but the draft of the water runs about the same way, because there is nothing to change it or block it. In my judgment, I think the upper piers, those at the bridge, are the easier to run.

Q. How far above the piers where you struck does the current commence to be rapid?

A. Where the Minnesota River strikes the Mississippi River, from 3 to 4 miles up.

Q. Is the current any stronger at these piers than it is on the Mississippi River, about 3 or 4 miles up?

A. About the same.

Q. What is the reason you could not stop that boat between Mendota and the piers?

A. We were too near the piers.

Q. Could you stop that boat anywhere between Mendota and the piers?

A. Yes; give us room to back her up.

Q. What would you have had to do to stop that boat anywhere between Mendota and the piers?

A. Back her by steam.

Q. Did they attempt to back her by steam this time before they struck the piers?

A. I think they did attempt to back her, but we were so near it was no use.

Q. How far were they from the piers when they attempted to back her and it was no use?

A. We had passed the Julia anyway; the wind was blowing so that I could not have heard the bell ring to back her, if they had rung. I was standing at the bow of the steamboat, and when we struck jumped into the barge.

Q. How much harder was the wind when you passed the
70 Julia, than it had been in the after part of the day, when you stopped at Mendota?

A. A good deal harder; it blew a gale.

Q. How was the wind from the time you left Mendota down to the time you passed the Julia?

A. It commenced blowing very hard—harder than it had been—when the Julia first blew the whistle for us to pass her.

Q. How far were you from the Julia when she first blew her whistle?

A. Probably 500 or 600 yards; it was in the night; it might have been more or less.

Q. How had the wind been from the time you made the Mississippi River, down to the time the Julia signaled you?

A. It commenced blowing very hard, by spells; it continued blowing by gusts all the way down; it calmed a little when we were lying at Mendota.

Q. When you got out from under the bluff at Mendota, how quick did you meet with the wind?

A. When we got out a short distance from the shelter of the bluffs, we felt the wind.

Q. If that wind continued at spells all the way down till you met the Julia, would it, or not, naturally increase after you got away from the bluffs?

A. It had calmed down some as we lay at Mendota, and rose again as we got a short distance.

Q. You stated that you felt the wind more after getting from under the bluffs, after leaving Mendota; now, are there any bluffs down at the lower piers were you struck?

A. There are some bluffs, but not so close by.

Q. Was there more exposure from the wind in passing the lower piers than after leaving Mendota; and, if so, why?

A. I should judge there was some more room; the river is wider.

Q. How as to timber protecting it?

A. A little timber, but far off; the wind has more sweep there than above, as the river is wider.

Q. You stated that you passed the Julia about half a mile above the pier, and that the wind caused you to take a different course from the one you had intended in passing, and that you didn't get your course again up to the time that you struck; now, did not the Mollie Mohler have sufficient power to stop herself and the barges in that half mile, if she had backed and tried it?

71 A. She had plenty of power to stop, if the wind had not blowed so hard at the time.

Q. Which way was the wind blowing?

A. It was coming broadside to us, from the right-hand side coming down.

Q. Would the wind from that quarter increase the current?

A. No; not in the stream.

Q. What was there to prevent you turning that boat around, and turning her up stream?

A. The wind prevented us.

Q. Did you have any anchor aboard?

A. Yes; we had an anchor aboard—no chain; they use no chains there.

Q. What was your anchor for?

A. To stop the boat; they hardly ever do in sandy bottom.

Q. Did you drop an anchor at all?

A. No.

Q. Do you mean to testify that that boat, by reason of the wind, after you passed the Julia, could not have been stopped by reversing her engines?

A. No; we might have stopped it, but the wind was blowing so hard we could not have got her in straight course to back her.

Q. If the engines had been reversed and backed, and an anchor dropped there, what would have been the effect?

(Objected to because it does not appear that the witness was an expert in handling a boat.)

A. Dropping an anchor would have little or no effect, as the bottom is a sandy one I was on board the Chippewa Falls, and we dropped an anchor below these same piers where we struck, and it dragged us on the loose sandy bottom more than three miles. The pilot would know better as far as handling the engines are concerned; that is entirely out of my knowledge or business, or handling the boat. The pilot and engineer tend to running the boat and handling the engine.

Q. How much stronger was that wind just as you passed the Julia than it was when she signaled you to pass?

A. It was blowing harder; much harder, I think. It was blowing darned hard.

Q. Where was it blowing darned hard?

A. It was blowing darned hard just as we passed the Julia, and after we passed her.

Q. And how as to the time that she signaled you to pass?

A. It blew harder as we passed her.

72 Q. What was it, a gust, or what?

A. A gust of wind.

Q. How much stronger did the wind blow at the time the Julia signaled you to pass, than it did at the time you made the Mississippi River, after making the bluffs?

A. It blew very much stronger; the wind was blowing by gusts, not a steady wind.

Q. Did these gusts of wind continue to increase in force from the time you made the Mississippi to the time the Julia signaled you, or how otherwise?

A. Yes; they did, to the best of my knowledge.

Q. You answer, you were not able to save any wheat from the Erricson; what became of it in the bags?

A. We were not able to save any; the wheat stayed in the bags and sunk.

Q. Has the barge been raised, and how long after she sunk?

A. Yes; shortly after she sunk; they went to work at it right away.

Q. What became of the sacks of wheat?

A. I don't know; I was not there when they raised her.

Q. Who raised her?

A. Captain Houghton, I think, superintended the raising of her. I think he is a member of the packet company.

Redirect-examination:

Q. Are you a licensed pilot on the Mississippi or Minnesota River?

A. No; I am no pilot at all.

Q. From the time you entered the Mississippi River until the time of the accident did the wind blow steady or come in gusts?

A. It came in gusts.

Q. After you entered the Mississippi River until the time of the accident, was it light enough for you to see to navigate the river in safety, and for you to discern the channel of the river and the objects along its bank?

A. Yes; it was.

Recross-examination:

Q. What colored stone is that pier built of?

A. Blue-stone.

Q. How far in the dark night could you see that blue-stone pier?

73 A. In a dark night not at all; but that was not a dark night. There are always in the night, and were at that time, signal-lights on the piers, one on each pier.

WILLIAM KAHLOW.

Sworn to and subscribed before me this 25th day of January, A. D. 1868.

FRANCIS BLOODGOOD,
U. S. Court Commissioner, Dist. Wisconsin.

MAY 4, 1871.—This day came the parties, by their counsel, and this cause came on to be heard upon the pleadings and proofs, and not being concluded, the same was adjourned until to-morrow morning.

MAY 5, 1871.—This day came the parties, by their counsel, and the hearing of this cause was resumed, and being concluded, the court held the same under consideration.

JUNE 5, 1871.—This day came the parties, by their counsel, and on consideration of the pleadings and proofs, and of the arguments of counsel thereon, it is ordered by the court that reference be, and is hereby, made to the clerk as commissioner to ascertain and report the amount to be decreed the libellant.

And now at this same term, to wit: August special term, A. D. 1871, and on the sixth day thereof, to wit: on the 4th day of September, A. D. 1871, the following proceedings were had, to wit:

This day came the parties, by their counsel, and came John M. Miller, clerk, to whom it was referred to ascertain and report the amount to be decreed the libellant, and reported the sum of two thousand eight hundred and forty dollars and sixty-six cents, which report is as follows:

District court of the United States of America in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER, &c. } In admiralty.

To the Hon. Andrew G. Miller, judge of said court:

In pursuance of an order of court referring to me to ascertain and report the amount to be decreed the libellant in the above cause, made June 5, 1871, I respectfully report the sum of two thousand eight hundred and forty $\frac{66}{100}$ dollars as due the libellant, to wit:

74	May 28, 1866, amount paid by libellant to Joseph Reynolds, as per fifth allegation of libel.....	$2,075 50
	Interest from May 28, 1866, to September 4, 1871, 5 years, three months, and six days, at 7 per cent.....	765 16
		$2,840 66

All which is respectfully submitted.

J. M. MILLER,
U. S. Com'r E. Dist. Wis.

MILWAUKEE, *Sept.* 4, 1871.

And it is ordered by the court that said report be, and is hereby, confirmed, and that said libellant is entitled to receive the said amount.

Whereupon it is ordered, adjudged, and decreed by the court that said libellant, The Home Insurance Company, do have and recover of the Northwestern Union Packet Company, Peyton S. Davidson, and Joseph A. Shepherd, the stipulators, the said sum of two thousand eight hundred and forty dollars and sixty-six cents, and ninety-nine dollars and forty-five cents costs, as taxed, and in default of the payment of the same within ten days that an execution be issued against them for the same.

A. G. MILLER.

Decreed, signed, recorded, and enrolled Sept. 4th, A. D. 1871.
J. M. MILLER, *Clerk.*

And the same day, in open court, the said stipulators prayed an appeal to the circuit court of the United States for the eastern district of Wisconsin; whereupon it is ordered by the court that an appeal be, and hereby is, allowed, and that said appellants give bond with sureties to be approved by the judge, in the penalty of four thousand five hundred dollars within ten days.

SEPTEMBER 7TH, 1871.—This day came said appellants and filed the bond of Henry M. Hart and John M. Levy in the penalty of four thousand five hundred dollars, conditioned "that they shall prosecute their

appeal with effect, and pay all such costs and damages, charges and expenses as shall be awarded against them as such appellants, and answer any decree that may be made therein," which said bond is approved by the judge and is as follows:

75 District court of the United States, eastern district of Wisconsin. —In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE Northwestern Union Packet Co., claimant and respondent, and P. S. Davidson and Joseph A. Shepherd, stipulators of said claimant.

Know all men by these presents that we, Henry M. Hart and John M. Levy, of the city of La Crosse, in the State of Wisconsin, are held and firmly bound unto the Home Insurance Company in the sum of four thousand and five hundred dollars, lawful money of the United States of America, to be paid to the said The Home Insurance Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals the fifth day of September, A. D. 1871.

Whereas the above named, The Northwestern Union Packet Company, P. S. Davidson, and Joseph A. Shepherd have appealed to the circuit court of the United States for the eastern district of Wisconsin from a decree of the district court of the United States for the said eastern district of Wisconsin, made on the fourth day of September, A. D. 1871, in a cause wherein the said The Home Insurance Company was libellant, and the said The Northwestern Union Packet Company was claimant of the steamboat Mollie Mohler, and respondent:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal with effect and pay all such costs and damages, charges and expenses, as shall be awarded and decreed against them as such appellants, and answer any decree that may be made therein, then this obligation to be null and void; otherwise of force.

HENRY M. HART. [SEAL.]
JOHN M. LEVY. [SEAL.]

76 STATE OF WISCONSIN,
County of La Crosse, ss:

Henry M. Hart and John M. Levy, being duly sworn, doth each for himself depose and say that he is one of the persons named in and who executed the foregoing bond; that he is a resident and freeholder within the State of Wisconsin, and is worth the sum of four thousand and five hundred dollars over and above all his debts and liabilities, in property not by law exempt from execution.

JOHN M. LEVY.
H. M. HART.

Sworn to before me this 6th day of September, 1871.
[SEAL.] JOSEPH W. LOSEY,
Notary Public, La Crosse, Wisconsin.

September 7th, 1871. Approved.

A. G. MILLER,
District Judge.

And now at this same term, to wit: August special term, A. D. 1871, and on the sixth day thereof, to wit: on the 4th day of September, A. D. 1871, the following proceedings were had, to wit:

This day came the parties, by their counsel, and came John M. Miller, clerk, to whom it was referred to ascertain and report the amount to be decreed the libellant, and reported the sum of two thousand eight hundred and forty dollars and sixty-six cents, which report is as follows:

District court of the United States of America in and for the eastern district of Wisconsin. In admiralty.

HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER, &c. } In admiralty.

To the Hon. Andrew G. Miller, judge of said court:

In pursuance of an order of court referring to me to ascertain and report the amount to be decreed the libellant in the above cause, made June 5, 1871, I respectfully report the sum of two thousand eight hundred and forty $\frac{66}{100}$ dollars as due the libellant, to wit:

74	May 28, 1866, amount paid by libellant to Joseph Reynolds, as per fifth allegation of libel.....	$2,075 50
	Interest from May 28, 1866, to September 4, 1871, 5 years, three months, and six days, at 7 per cent.....	765 16
		$2,840 66

All which is respectfully submitted.

J. M. MILLER,
U. S. Com'r E. Dist. Wis.

MILWAUKEE, *Sept.* 4, 1871.

And it is ordered by the court that said report be, and is hereby, confirmed, and that said libellant is entitled to receive the said amount.

Whereupon it is ordered, adjudged, and decreed by the court that said libellant, The Home Insurance Company, do have and recover of the Northwestern Union Packet Company, Peyton S. Davidson, and Joseph A. Shepherd, the stipulators, the said sum of two thousand eight hundred and forty dollars and sixty-six cents, and ninety-nine dollars and forty-five cents costs, as taxed, and in default of the payment of the same within ten days that an execution be issued against them for the same.

A. G. MILLER.

Decreed, signed, recorded, and enrolled Sept. 4th, A. D. 1871.
J. M. MILLER, *Clerk.*

And the same day, in open court, the said stipulators prayed an appeal to the circuit court of the United States for the eastern district of Wisconsin; whereupon it is ordered by the court that an appeal be, and hereby is, allowed, and that said appellants give bond with sureties to be approved by the judge, in the penalty of four thousand five hundred dollars within ten days.

SEPTEMBER 7TH, 1871.—This day came said appellants and filed the bond of Henry M. Hart and John M. Levy in the penalty of four thousand five hundred dollars, conditioned "that they shall prosecute their

appeal with effect, and pay all such costs and damages, charges and expenses as shall be awarded against them as such appellants, and answer any decree that may be made therein," which said bond is approved by the judge and is as follows:

75 District court of the United States, eastern district of Wisconsin. —In admiralty.

HOME INSURANCE COMPANY, LIBELLANT,
vs.
THE STEAMBOAT MOLLIE MOHLER, THE Northwestern Union Packet Co., claimant and respondent, and P. S. Davidson and Joseph A. Shepherd, stipulators of said claimant.

Know all men by these presents that we, Henry M. Hart and John M. Levy, of the city of La Crosse, in the State of Wisconsin, are held and firmly bound unto the Home Insurance Company in the sum of four thousand and five hundred dollars, lawful money of the United States of America, to be paid to the said The Home Insurance Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals the fifth day of September, A. D. 1871.

Whereas the above named, The Northwestern Union Packet Company, P. S. Davidson, and Joseph A. Shepherd have appealed to the circuit court of the United States for the eastern district of Wisconsin from a decree of the district court of the United States for the said eastern district of Wisconsin, made on the fourth day of September, A. D. 1871, in a cause wherein the said The Home Insurance Company was libellant, and the said The Northwestern Union Packet Company was claimant of the steamboat Mollie Mohler, and respondent:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal with effect and pay all such costs and damages, charges and expenses, as shall be awarded and decreed against them as such appellants, and answer any decree that may be made therein, then this obligation to be null and void; otherwise of force.

HENRY M. HART. [SEAL.]
JOHN M. LEVY. [SEAL.]

76 STATE OF WISCONSIN,
County of La Crosse, ss:

Henry M. Hart and John M. Levy, being duly sworn, doth each for himself depose and say that he is one of the persons named in and who executed the foregoing bond; that he is a resident and freeholder within the State of Wisconsin, and is worth the sum of four thousand and five hundred dollars over and above all his debts and liabilities, in property not by law exempt from execution.

JOHN M. LEVY.
H. M. HART.

Sworn to before me this 6th day of September, 1871.
[SEAL.] JOSEPH W. LOSEY,
Notary Public, La Crosse, Wisconsin.

September 7th, 1871. Approved.

A. G. MILLER,
District Judge.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said eastern district of Wisconsin, this 29th day of September, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

J. M. MILLER, *Clerk.*

[Here follows map marked page 76.]

77 *Proceedings in circuit court.*

And afterwards, at a stated term of said circuit court, begun and held, according to law, at the city of Milwaukee, on the first Monday of January, A. D. 1872, and on the 23rd day of said term, to wit, on the 22nd day of February, A. D. 1872, the following proceedings were had, to wit:

Hearing in circuit court.

THE HOME INSURANCE CO., OF NEW YORK,
vs.
THE STEAMBOAT MOLLIE MOHLER, HER BOATS, &c., The Northwestern Union Packet Company, claimant & appellant. } Appeal in admiralty.

This day came the parties, by their counsel, and this cause came on to be heard before the Honorable Thomas Drummond, circuit judge, presiding alone, and was argued by Mr. Emmons for libellant, and Mr. John W. Cary for the claimant and appellant, and being submitted, the same was held under advisement.

And now, at this same term, to wit, April term, 1872, and on the twenty-second day thereof, to wit, on the second day of May, A. D. 1872, the following proceedings were had, to wit:

Decree of circuit court.

THE HOME INSURANCE CO. OF NEW YORK
vs.
THE STEAMBOAT MOLLIE MOHLER, HER BOATS, &c., The Northwestern Union Packet Co., claimant & appellant. } Appeal in admiralty.

78 This day came the parties by their counsel, and on consideration of this cause and the arguments of counsel, it is ordered by the honorable Thomas Drummond, circuit judge, that the decree of the district court be, and hereby is, affirmed.

And it is further ordered, adjudged, and decreed that the libellant do have and recover of the claimant The Northwestern Union Packet Com-

pany and its stipulators, Peyton S. Davidson and Joseph A. Shepherd, the sum of two thousand eight hundred and forty dollars and sixty-six cents, the amount of the decree of the district court, together with one hundred and thirty-one dollars and forty-four cents, interest on said decree to this date, amounting in all to two thousand nine hundred and seventy-two dollars and ten cents, together with the costs in this cause to be taxed, and also the costs decreed in the district court, and in default of the payment of the same within ten days, that the libellant have execution therefor.

Appeal.

MAY 10, 1872.—This day came the claimant The Northwestern Union Packet Company, and Peyton S. Davidson and Joseph A. Shepherd, its stipulators, by their counsel, and prayed an appeal to the Supreme Court of the United States, and filed the bond of John M. Levy and J. A. Spier, of the city and county of La Crosse, in the State of Wis-
79 consin, in the penalty of five thousand dollars, conditioned that the said Northwestern Packet Company, Peyton S. Davidson and Joseph A. Shepherd, shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, which bond is approved by the district judge, and is as follows, to wit:

Appeal bond.

Circuit court of the United States, eastern district of Wisconsin.

THE HOME INSURANCE COMPANY
vs.
THE STEAMBOAT MOLLIE MOHLER, THE NORTHwestern Union Packet Company, claimant and respondent, and Peyton S. Davidson and Joseph A. Shepherd, stipulators of said claimant.

Know all men by these presents that we, John M. Levy and J. A. Spier, of the city and county of La Crosse, and State of Wisconsin, are held and firmly bound unto the above-named The Home Insurance Company in the sum of five thousand dollars, to be paid to the said The Home Insurance Company, its successors or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the fourth day of May, A. D. 1872.

80 Whereas the above-named The Northwestern Union Packet Company, Peyton S. Davidson and Joseph A. Shepherd, are about to prosecute an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the circuit court of the United States for the eastern district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above-named The Northwestern Union Packet Company, Peyton S. Davidson and Joseph A. Shepherd shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN M. LEVY. [SEAL.]
J. A. SPIER. [SEAL.]

STATE OF WISCONSIN, *La Crosse County, ss:*

We, John M. Levy and J. A. Spier, being duly sworn, severally depose and say that we are each of us worth the sum of ten thousand dollars over and above all our indebtedness and property exempt from execution.

JOHN M. LEVY.
J. A. SPIER.

Subscribed and sworn this 8th day of May, A. D. 1872, before me.

CYRUS K. LORD,
U. S. Commissioner, Western Dis't Wisconsin.

(Endorsed:) May 10, 1872. Approved.

A. G. MILLER,
District Judge.

Appeal allowed, etc.

Whereupon it is ordered by said district judge that said appeal be, and hereby is, allowed, and that execution be superseded, and a citation issued.

81 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a copy of the record and proceedings in the case of The Home Insurance Co. of N. Y. vs. The Steamboat Mollie Mohler, her boats, &c.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said eastern district of Wisconsin, this sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-seventh.

[SEAL.] EDWARD KURTZ, *Clerk.*

82 [SEAL.] The United States of America to The Home Insurance Company of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein The Northwestern Union Packet Company, claimant of the steamboat Mollie Mohler, her boats, etc., and Peyton S. Davidson and Joseph A. Shepherd, its stipulators, are appellants, and you are appellee, to show cause, if any there be, why the decree passed against the said Northwestern Union Packet Company, Peyton S. Davidson and Joseph A. Shepherd should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this tenth day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

A. G. MILLER,
District Judge.

We accept service of the above citation this 24 day of May, A. D. 1872.

EMMONS & VAN DYKE,
Proctors for Libellant and Appellee.

(Indorsement on cover:) No. 348. The steamboat Mollie Mohler, her boats, &c. The Northwestern Union Packet Company, claimant, & al., appellants, vs. The Home Insurance Company of New York. E. Wisconsin, C. C. U. S. Filed 7th December, 1872.

Supreme Court United States.

No. 71 OCTOBER TERM, 1874.

THE STEAMBOAT MOLLIE MOHLER, her boats, etc., THE NORTHWESTERN UNION PACKET COMPANY, Claimant, and PEYTON S. DAVIDSON and JOSEPH SHEPHERD, Stipulators,

Appellants,

AGAINST

THE HOME INSURANCE COMPANY

Respondent.

BRIEF.

JOHN W. CARY,

Of Counsel for Appellant.

Supreme Court, United States.

No. 71. October Term, 1874

THE STEAMBOAT MOLLIE MOHLER, her boats, etc. THE NORTHWESTERN UNION PACKET COMPANY, Claimant, and PEYTON S. DAVIDSON, and JOSEPH SHEPHERD, Stipulators,
Appellants,

vs.

THE HOME INSURANCE COMPANY,
Respondent.

This is an appeal in admiralty from a decree of the Circuit Court, for the Eastern District of Wisconsin. The libel was filed Nov. 22d, 1867. It alleges the shipment of a quantity of wheat, by one Joseph Reynolds, on a barge named Erickson, towed by the steamer Mollie Mohler, from Mankato to St. Paul, in the State of Minnesota, that the libellant made assurance thereon, and that by the mismanagement, carelessness, recklessness and negligence of the master and his mariners and servants, said barge was sunk in the Minnesota river, and said wheat wholly lost, that libellant paid therefor to the assured the sum of $2075.50, and thereby became subrogated to the rights of the owner and shipper, and alleges that the defendant was not prevented by damages of navigation, or by fire, from safely carrying and delivering said wheat at St. Paul.

The answer denies that said wheat was sunk in the Minnesota river, but admits and alleges that wheat was carried safely until said steamboat with said barge in tow reached a point in the Mississippi river, about 2 miles above St. Paul, at which point were standing in said river several stone piers, erected for the purpose of a railroad bridge across said river; that just before said steamboat reached said piers, and while proceeding with due caution and care, the said steamboat and barges then being in the widest and best channel of the river, and the said master and mariners and servants being respectively in their proper places, a strong gust or gale of wind coming from a southerly direction, suddenly arose and struck said steamer and barges with great force and violence, so much so as to change the course of the said steamboat and barges, notwithstanding the best efforts of the said master and his mariners and servants to keep them in their course, which said wind, together with the current of the river, which there sets toward the middle of said piers, drove said steamboat and barges toward said middle pier, and, in spite of the best efforts of said master and his mariners and servants, the said barge Eclipse struck said middle pier with great violence, which stove a hole in her side, by reason whereof she filled with water and sunk immediately; that the jar caused by the striking of said barge against said pier, and the consequent sudden stoppage of said steamboat and barges, and also the current of said river, which, at that point is very swift, caused the said barge Ereickson to careen, and fill with water, and sink. Record, p. 9.

The right of the libellant to recover in this case is based entirely upon the claim, that the captain of the steamboat should not have attempted to pass the piers at the time when the effort was made; but that after coming to the piers he should have rounded to and run up stream to safe anchorage, and there remained and waited for calmer weather. There is no pretense of want of skill or mismanagement in any other particular.

The steamer and barges were in good condition, staunch and strong, and well manned, and properly handled; but it is

claimed that the steamer should not have made the attempt to run the piers at that time on account of the wind. The day had been windy and the steamer on arriving at Mendota about six miles above St. Paul, laid up for the wind to go down, and remained there until sundown, when the wind went down; they then started down the Mississippi. From Mendota down to within a short distance of these piers the bluffs are high and prevented the boats feeling or being affected by the wind, but just before reaching the piers the bluffs recede from the river so as not to operate as a protection from the wind, and on reaching this point occasional gusts of wind were blowing, although the heavy wind of the day had subsided, and these were only occasional gusts.

On page 12, Captain Holmes says: "about an hour before sundown we landed at Mendota, and laid there until after sundown for the wind to go down, then started on our course to St. Paul." "The wind went down with the sun, and we had no wind to bother us after we left Mendota until we met the Steamer Julia," which was right at the bridge. Record, pp. 12 and 13.

The whole width of the tow or fleet was not over 65 feet. Record 14. "We could not have changed our course after we discovered wind blowing." Record 14. On page 28, Spencer says it was safer to run the piers, than to have attempted a landing under the circumstances of this case. Record, page 31.

The clerk Hutchinson testifies that the weather was boisterous during the afternoon, that the boat laid up on account of the weather, at Mendota, and remained until about sun-down, and says, "when we started the wind had moderated, and he thought he could come down without any trouble, but before we got to the piers it commenced blowing hard again, a few lengths above the piers." "Only 3 or 4 lengths above the pier so close we could not get out of it." "It came sudden." Record, page 35.

John Haycoek was the pilot of the Julia, he testifies the wind was blowing in sudden gusts or squalls. He also testifies that the Mollie Mohler was in proper position for passing the piers, when he passed her just above them, and no management would avail against such sudden gusts of wind in such position.

John Houghton testified that the sudden gust of wind caused the accident, and that the boat was well handled. Record 39.

The captain and pilot were among the most skillful on the river, and in all respects handled their boat properly.

ASSIGNMENT OF ERRORS.

The court erred in holding that the officers of the steamboat shculd not have attempted to run the piers at that time, but should have rounded to and run up stream to a place of safety, and there remained until the wind moderated.

2. After it was discovered that the wind was blowing in gusts so as to make it difficult to pass the piers in safety, it was impossible to round to and run up stream to a place of safety without incurring greater danger than by attempting to pass the piers. Therefore,

I.

The libel should have been dismissed, and the decree is erroneous, and should be reversed.

This is not a case governed by the rule of this Court, that on a disputed question of fact, this Court will not disturb the decree where both the District and Circuit Court have decided the same way. There can hardly be said to be a dispute of facts here. The whole testimony shows that it had been a boisterous day; that the steamboat laid up at Mendota before attempting to pass either bridge for the wind to go down, and remained until sundown, when, so far as they discovered, the weather had become sufficiently calm to enable them to run the bridges safely; that they then started on their voyage and

passed the bridge at Mendota safely, and felt no wind until they came immediately upon the piers where the accident occurred; and that when they discovered or felt the wind seriously they were too near the piers to round to and avoid going through in safety, and in that extremity decided to attempt the passage of the piers. These facts are clearly shown by all the testimony and the whole case. The question, therefore, is one of laws, rather than a disputed question of fact. What was the duty of the officers of the boat under such circumstances, and what the liability?

The only pretense of negligence or mismanagement was in attempting to go through said piers at that time. The officers of the boat laid up and waited until they believed the wind had abated sufficiently to allow them to complete their voyage in safety, and then proceeded on their voyage. This was the exercise of proper care and caution. There was nothing to warn them of danger. They felt no wind until just as they arrived at the piers, they were struck by a sudden, severe gust; the emergency was then upon them; they had to choose between an effort to pass the bridge in safety, or to attempt to retrace their steps. They acted upon their own best judgment which was all that could be required of them.

The loss arose from a peril of navigation and not from the appellants' negligence.

Proper care and caution has been exercised, and the respondent was not in peril from any wrongful act or omission of his. The wind was first felt at the time they met and passed the Julia. Record, 19. This was below the ferry at the cave, which was only half a mile from piers. Record, 17.

The testimony of Kahlors as to the point where they met the Julia is in conflict with all the other witnesses.

The decree should therefore be reversed.

JOHN W. CARY,
Of Counsel for Appellant.

Supreme Court

—— OF THE ——

UNITED STATES.

THE HOME INSURANCE COMPANY, OF NEW YORK,

Appellee,

vs.

THE STEAMBOAT MOLLIE MOHLER, THE NORTH WESTERN UNION PACKET COMPANY, AND OTHERS,

Appellants.

The Statement of the Case.

N. J. EMMONS,

Counsel for Appellee.

Supreme Court

—— OF THE ——

UNITED STATES.

THE HOME INSURANCE COMPANY, OF NEW YORK,

Appellee,

vs.

THE STEAMBOAT MOLLIE MOHLER, THE NORTH WESTERN UNION PACKET COMPANY, AND OTHERS,

Appellants.

The Statement of the Case.

The appellee was insurer of a cargo of wheat shipped on a barge appurtenant to the steamer, on the 12th of May, 1866, at Mankato, on the Minnesota River, in the State of Minnesota, and destined to St. Paul, on the

Mississippi. The barge was wrecked by collision with a bridge pier, just above the city of St. Paul, and the cargo became a total loss, which the Insurance Company paid, and filed its libel in the District Court to recover the amount under its right of subrogation.

The libel is in ordinary form, alleging that the wheat was lost through the carelessness and negligence of the respondent and its servants. It was alleged in defence that the accident was caused by a sudden and violent gust of wind, driving the steamer upon one of the bridge piers.

The case was heard in the District Court upon the pleadings and proofs appearing in the record, and formal proofs made at the hearing of the insurance and payment of loss. Decree for libellant, and affirmed on appeal to the Circuit.

The District Judge based his judgment solely upon the question of fact, of negligence in attempting to run the passage in such a state of weather as prevailed on the night in question. His opinion will be found reported in

Bissell's C. C. Rep.

The Circuit Court orally sustained the findings and affirmed the decree.

The libellant called no witnesses—the case being heard upon respondent's testimony alone.

POINTS.

I. The respondent's steamer was guilty of gross negligence.

The wind had been blowing violently all day, coming in squalls; and they laid up at Mendota, near the mouth of Minnesota River, on account of the wind. It had "calmed down *some*," says the mate, when they left Mendota; but it continued to blow very hard all the way down to the piers (Kahlow's testimony, record p. 47 and onward). They should have acted upon the timely admonition they had and not attempted to run the piers. It was in night time; the river was high, or above the ordinary stage of water, which increased the current; they should have rounded to and sought safety somewhere above. They made no attempt whatever to avoid the passage, when it abundantly appears they might easily have accomplished it.

The testimony of all the principal witnesses sustains the conclusions of the lower courts.

Holmes, the master, tells us of the prevalence of the wind during the afternoon, in gusts and squalls: and that it continued of the same character after they left Mendota, he also tell us—

Question by the libelant's counsel (rec. p. 13):

"Describe particularly this wind that drove you against the pier."

A. "The wind was blowing in heavy gusts very nearly southeast, as near as I could say. We first felt the wind so as to interfere with our handling just after we met the Julia, and after passing her it lulled. The next heavy gale struck us four or five lengths above the piers."

They met the Julia "a mile or one and half miles above the piers." (Kahlow, the mate's, testimony, p. 47.)

It will hardly be contended that they could not at this

distance have rounded to; and when they all tell us of the extreme danger with the wind the direction that it was, can we hesitate as to their duty?

Charles T. Spencer, the expert witness, (record pp. 26–27), tells us that such manouvre was practicable, easy of accomplishment, and a neglect of it bad seamanship—in fact, foolhardiness.

Mr. Spencer further says that backing up and rounding to could be done at a distance much nearer the piers than was the Mohler when she met the Julia, where the heavy admonitory gust was experienced. Less than a fourth of a mile was sufficient (pp. 26–27).

It was contended for the respondent below, that some of its witnesses held different opinions from Spencer's. They do not in fact. Their judgments are based upon the hypothesis that precaution was neglected until the steamer was in close proximity to the piers. But it will hardly do for respondent to advance such an argument. If they cannot make out a defence without giving preference and credence to a portion of their witnesses over others, they fail.

Respondent's evidence is singularly discrepant and contradictory. For instance, Luckey, the pilot, was asked what effort, if any, was made to avoid the collision, he answers in the affirmative—"backing up, straightening up to get through endways." (Rec. 33.) Whereas the master says explicitly, in answer to several questions, that nothing whatever was done. (Rec. 20.) Again, as to the wind. Master says they had no wind to interfere until they met the Julia. Whereas the mate, with the same opportunity to judge—he was on deck—says it was blowing very hard all the way down from the mouth of the Minnesota—the gusts increasing: and when they were signaled by the Julia it was blowing a hurricane.

I call particular attention to the whole of the mate's deposition, commencing on page 46.

There are other discrepancies and inconsistencies that might be referred. I have gone far enough, I think, to justify the decrees below.

The case of the "*Lady Pike*" is, I understand, to be argued at the present term. The libel was filed to recover for a collision with the same piers, as in the present case. The same Judges participated, and the libel was dismissed. The defence was the same as here, a sudden gust of wind. The old English case of the barge shooting a bridge was followed: where it was held that she, being overtaken by a sudden and unexpected gust whilst passing through, she was excused: but if the prevailing bent of the wind had been such as to forewarn her, she would be liable. The distinction was drawn between this case and the "Lady Pike."

II. I cannot anticipate any debatable question of law in the case. It is unnecessary to cite authority in this tribunal to show that where the carrier's own negligence has brought him into danger, or subjected him to the influence of *vis major*, he is not excused. The principle was expressly declared, in the case of *N. Jersey Steam Nav. Co.*, 6 *How.*, and has been frequently recognized and applied in subsequent cases, especially *Ex. Co. vs. Halliday*, 12 *Wall.*

This Court will not reverse unless clear and palpable error in judgment upon the facts is shown.

I most respectfully submit that the decree should be affirmed.

N. J. EMMONS,

Counsel for Appellee.